

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

October 7, 2014

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Acting Chairman: Pat Brill

Commissioners Present: Bob Cronin
Andy Hegedus
Edgar Johnson
Frank McIntosh
Alan Silverman

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Supervisor

Acting Chairman Pat Brill called the Planning Commission meeting to order at 7:00 p.m.

1. ELECTION OF OFFICERS.

MOTION BY MR. JOHNSON, SECONDED BY MR. HEDEGUS, ALAN SILVERMAN WAS NOMINATED AND ELECTED AS PLANNING COMMISSION CHAIRMAN; MOTION BY MR. SILVERMAN, SECONDED BY MR. JOHNSON, ANDY HEGEDUS WAS NOMINATED AND ELECTED AS PLANNING COMMISSION VICE CHAIR; AND, ELIZABETH DOWELL WAS NOMINATED AND ELECTED AS PLANNING COMMISSION SECRETARY.

VOTE: 6-0
AYE: BRILL, CRONIN, HEGEDUS, JOHNSON, MCINTOSH,
SILVERMAN
NAY: NONE

MOTION PASSED UNANIMOUSLY

At this point in the meeting, Mr. Silverman presided over the meeting as Chairman.

2. THE MINUTES OF THE SEPTEMBER 2, 2014 PLANNING COMMISSION MEETING.

Mr. Silverman: The minutes of the September Planning Commission have been distributed. Are there any additions, comments or corrections to the minutes? Hearing none, the minutes stand approved by acclamation.

Ms. Feeney Roser: Chairman Silverman, based on the audience composition tonight, the Commission may wish to switch the order of agenda items by moving 3 to 4 and 4 to 3, so that we can go first with the Lofts at Center Street, and then consider No Impact Home Businesses after.

Mr. Silverman: It has been recommended by the Director that we move the business order. Are there any objections in doing that? Then the order of business will be rearranged, and we will discuss Item #4 as our first item to be heard.

4. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, A REZONING, MAJOR SUBDIVISION AND A SPECIAL USE PERMIT FOR THE .846 ACRE PROPERTY LOCATED ON THE WEST SIDE OF CENTER STREET FROM 21 – 49 (ODD ADDRESSES). APPLICANTS ARE REQUESTING APPROVAL TO REZONE THE PARCELS FROM RS (SINGLE FAMILY DETACHED RESIDENTIAL) AND NCV (NEW CENTER VILLAGE) TO BB (CENTRAL BUSINESS DISTRICT) AND MAJOR SUBDIVISION APPROVAL TO DEMOLISH THE EXISTING SINGLE-FAMILY DWELLINGS AT THE SITE AND BUILD A FOUR STORY, MIXED USE BUILDING WITH 3,000 SQUARE FEET OF OFFICE SPACE AND PARKING ON THE FIRST FLOOR AND 30 APARTMENTS ABOVE.

Ms. Feeney Roser: Thank you Chairman Silverman. I am pleased to review the Planning and Development Department Report on the Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit for the Lofts at Center Street.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On May 14, 2014 the Planning and Development Department received an application from 21 Center Street Associates, LLC represented by the Lang Development Group for the rezoning, major subdivision, and required special use permit for the .846 acre property located at 21–49 (odd addresses only) Center Street. The applicants are seeking approval to combine six RS zoned parcels on the west side of Center Street, from the entrance to the Municipal Parking Lot #3 to the University of Delaware lands abutting New Street, and to rezone the parcels from RS (one family detached residential) and NCV (New Center Village) to BB (central business district). Further, the applicants request major subdivision approval to demolish the existing single-family dwellings at the site and build a four story, mixed-use building with 3,000 square feet of commercial office space and parking on the first floor, and 30 two and three bedroom apartments on the three floors above. The required special use permit for apartments in the BB zone is also sought for this development, as well as the required Comprehensive Development Plan amendment.

The Planning and Development Department Report on the Lofts at Center Street follows:

Property Description and Related Data

1. Location:

The properties are located on the west side of Center Street from the entrance to municipal parking lot #3 and University of Delaware owned lands to the north at New Street.

2. Size:

.846 acres

3. Existing Land Use:

The site presently contains single-family dwelling rental units, with associated driveways, garages and accessory structures.

4. Physical Condition of the Site:

The property contains five single family style dwellings which are currently rental properties. These homes are a combination of masonry and siding, and are served by accessory garages – some attached and some detached – and access driveways.

The property has several large trees and grassed areas in the front and rear of the dwellings, as well as side yards. The site is relatively flat with a gentle slope north to south and from east to west, which becomes more pronounced as you approach Center Street. A chain link fence along the rear yards of the properties separates the site from UD's Frazier Field.

Regarding soils, according to the subdivision plan and the United States Department of Agriculture's Natural Resources Conservation Service, the site consists of Up (Urban Land) with 0% to 8% slopes. The Conservation Service indicates that these soils present no limitations for the development as proposed.

5. Planning and Zoning:

Currently the site is zoned RS (one family detached residential) and NCV (New Center Village).

RS is a single-family residential zone that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Area regulations.

- (1) *Minimum lot area.* RS—9,000 square feet.

- (2) *Maximum lot coverage.* The maximum lot coverage for any building, exclusive of accessory buildings, shall be 20%, and the total maximum lot coverage with some exceptions, shall be 44%.
- (3) *Minimum lot width.* RS—75 feet.
- (4) *Height of buildings.* Three stories or 35 feet.
- (5) *Building setback lines.* RS—25 feet.
- (6) *Rear yards. Interior lots:* RS—30 feet.
- (7) *Side Yards: Interior lots:* RS—10 feet, with a minimum aggregate width of the two side yards of 25 ft.

New Center Village (NCV) is an overlay district, which permits the uses in the underlying zoning district (RS), as well as other uses under a parallel set of special provisions. NCV allows the following:

- (1) One family detached dwelling; except that student homes shall not be permitted.
- (2) One family, semi-detached dwelling.
- (3) One family, town or row house.
- (4) Garden apartments.
- (5) High rise apartments.
- (6) Professional office and customary home occupations in a residence on ground floor locations only, with the following special provisions:
 - a. Professional office and customary home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.
 - b. The professional office and customary home occupation shall be clearly incidental to the residential use of the dwelling.
 - c. No exterior alterations inconsistent with the residential use of the dwelling shall be permitted.
 - d. No more than one employee shall be employed by the practitioner or said profession or customary home occupation.
 - e. One display sign affixed to the building not exceeding a total of two square feet, nor projecting more than one foot beyond the building, and not illuminated, shall be permitted.

Area regulations and other special requirements in NCV are as follows:

- (1) All permitted uses in this district shall be subject to the following design, building and procedural requirements in Article XXVII, site plan approval, of this chapter:
 - a. Section 32-97, Purpose, (a)
 - b. Section 32-98, Procedure, (a) through (i)
 - c. Section 32-98.3, Review criteria and performance standards. (a) through (d)
- (2) All permitted uses in the district shall be subject to all other applicable municipal code standards and procedural requirements, except as modified herein, including the requirements in chapter 27, Subdivisions, and chapter 32, Zoning.
- (3) With site plan approval as stipulated in this section, the maximum number of dwelling units per gross acre shall not exceed thirty.
- (4) All permitted rental dwelling units shall be limited to occupancy by one family or up to two unrelated tenants.
- (5) Open space and parkland stipulated in Article XXV, Landscape screening and treatment, and chapter 27, Subdivisions, shall not apply to any NCV zoned property, except that the Parks and Recreation Director shall require appropriate landscape screening, landscape treatment and tree planting through the site plan approval review process.
- (6) Regarding building design, the following additional standards shall apply:
 - a. Detailed elevation drawings of all proposed buildings shall be submitted including all signage; building materials; building height; the location, height and material of screening walls and fences; outdoor trash and

- recyclable material storage areas; and electrical, mechanical and gas metering equipment.
 - b. The architectural features, materials, and articulations of building facades shall be continued on all individual facades visible from public streets and sidewalks.
 - c. New structures or additions to existing structures shall not exceed four stories or 48 feet in height.
 - d. Large building facades shall be designed to appear as separate buildings; in other words, buildings shall avoid long, monotonous, uninterrupted walls.
 - e. All buildings shall have well-defined front facades with clearly articulated main entrances facing streets, and shall be aligned so that the dominant lines of such façades parallel the street line.
 - f. Buildings at intersections or corners may employ special architectural features including corner towers, cupolas, clock towers, spires, balconies, or similar ornamental features to emphasize their location; such features may exceed the height limitations established in this section.
 - g. Buildings shall be topped with pitched roofs, including overhanging eaves; flat roofs with articulated parapets and cornices may be permitted. Pitched roofing materials shall include natural or manmade slate, shingles (wood or asphalt composition) and metal formed to resemble standing seams. Fascias, dormers, and gables are encouraged.
- (7) Regarding site design, the following additional standards shall apply:
- a. Required off-street parking shall be determined on a case by case basis, with a minimum of one space per dwelling unit.
 - b. Off-street parking shall be located in rear or side yards only.
 - c. Off street parking for shared uses shall be encouraged; such parking and parking access ways may be required to be dedicated to the City for public use. Payment in lieu of required parking, to be determined by the City, may also be required.
 - d. Exterior lighting shall be minimal and shall not exceed lighting typically required for residences; such lighting shall not spill-over or cause glare on adjoining properties.
 - e. Rear or side yard service alleys for access to parking, to accessory buildings and or trash collection may be permitted.”

Ms. Feeney Roser: What is missing from the report are the details of the BB zoning which I know this Commission is familiar with, but which should have been included in the report and will be before Council review. As you know, the applicants are requesting BB zoning for the property, which is our central business district zoning and allows a myriad of commercial uses as well as apartments on upper floors with a Council granted special use permit.

“In terms of comprehensive planning, the Comprehensive Development Plan calls for single-family residential (medium density) uses at the site. Single-family residential medium density is defined in the Comprehensive Development Plan as “areas designated for dwellings occupied by one family, either detached, semi-detached, or townhouses, with overall densities of 4 to 10 dwelling units per acre.

In addition to the Comprehensive Development Plan’s land use guidelines for the area, the properties are also located in the Plan’s Economic Enhancement Strategy section which identifies the site as recommended for housing rehabilitation. Specifically, the Plan notes that “housing rehabilitation and affordable housing redevelopment should be concentrated in areas located in the north central and southeastern portion of downtown development framework. Efforts to encourage affordable and market rate family owner-occupant type projects should be emphasized and expanded. The City may also consider reducing the permitted downtown density in projects in this district for residential projects.”

In conjunction with this designation as a “Housing Rehab District” within the Economic Development Strategy of the Comprehensive Development Plan IV, action item commentary is included, which reads as follows:

“Regarding the City’s review of downtown mixed use redevelopment projects with housing components, the intent is to make it abundantly clear that the City seeks positive impacts from such residential uses. One key positive impact for an individual project, for example, might include the potential at the site for affordable housing for owner occupants. In particular, and perhaps most importantly, to implement this action item, Council may need to actively consider density reductions for projects for this type, on a case-by-case basis depending on the location, other site conditions and the nature of the project. Through the City’s multi-year effort to limit the proliferation of off-campus student housing in traditional neighborhoods, we have learned that one of the best zoning tools to promote affordable owner occupant housing is to significantly limit permitted density in approved residential projects to individual families or to no more than two unrelated tenants, or with similar specifications.” The commentary goes further to indicate “this zoning and development approval tool can be packaged with other incentives to encourage owner occupancy. In sum, we want Newark, especially downtown, to become a “destination city” featuring affordable housing for owner occupants, with an emphasis on occupancy for young couples and families, singles, recent University graduates, retirees and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence.”

The applicant’s Comp Plan amendment requests “commercial pedestrian oriented” uses for the site, which the Plan defines as “shopping and commercial uses of all types, including retail facilities for buying and selling of goods and services, as well as administrative and professional offices, personal service establishments, eating establishments, and shopping centers typically included in central business district with customers, to a lesser extent, relying on the automobile to patronize these businesses. Residential uses . . . may be permitted under certain limited circumstances.”

Regarding this amendment, please note Plan IV indicates that for residential uses “. . . professional administrative and commercial offices, churches, schools, nursing homes, funeral parlors, community centers, daycare centers, police and fire stations, bed and breakfasts, office research facilities, and similar light industrial uses, and various residential use types, may be accommodated very satisfactorily within areas not necessarily designated for such uses, depending upon the specific use involved, site design considerations, proposed site amenities, and the availability of adequate services and facilities.”

The requested “commercial pedestrian oriented” land use designation is recommended for the downtown Core District and defined in the Plan’s Economic Development

“ . . . [The] center of Newark’s commercial business district is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of downtown’s economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. Beyond that and particularly to encourage owner-occupancy downtown, the City may consider

reducing the permitted density in the project in this District for residential projects.”

Finally, regarding the requested Comp Plan amendment, please note that in the purposes and plan design section of the Plan, it indicates that the Comprehensive Plan is “not proposed as a warranty against alternative decision making when public needs or experience change – which, of course, may require Plan amendments – but, rather, it is intended as an officially adopted legally required public document designed to establish strategies and policies to ‘guide’ our community’s growth over approximately the next five to ten years.” As you know, the City is currently in the process of updating the Comprehensive Development Plan IV, which was adopted in 2008. The update (Comp Plan V) also calls for residential, low density uses (defined as 10 or fewer units per acre) for this section of Center Street, but given the NCV zoning overlay district would allow more density (30 units per acre) at the site, a hybrid designation might be more appropriate. Under Comp Plan V, the requested amendment land use designation would be Mixed Urban.

Additional information about the requested Comp Plan amendment may be found under Departmental comments.

Regarding adjacent and nearby properties, the lands to the north and northwest of the site are zoned “UN” and owned by the University of Delaware. To the south are two RS zoned parcels. One is the entrance to Municipal Parking Lot #3, which is owned by the City; and the other is a duplex dwelling with two 3-bedroom apartment units, which is a nonconforming use in the RS zoning designation. Further south, fronting on E. Main Street is the BB zoned US Post Office. Just to the west and southwest, the site is adjacent to a municipally owned parking lot zoned BB. Across Center Street from the site is the entrance to another municipal parking lot (Lot #4) zoned BB; north of the parking lot is a 6 unit apartment building which is nonconforming to its BB zoning designation; and further north are several single family dwelling rental units zoned RS.

Regarding gross residential density, please note that the Lofts at Center Street Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan calls for residential uses at a density of 35.46 dwelling units per acre. By way of comparison with recently approved BB zoned projects along Main Street, please note the following densities:

<u>Development</u>	<u>Units Per Acre</u>
Newark Shopping Center	47.79
Campus Edge	25.88
Kate’s Place and Choate Street Townhomes	25.02
Washington House	36.10
102 E. Main Street	20.83
108 E. Main Street	14.71
129 E. Main Street	35.29
132 Delaware Avenue	34.78
One South Main	37.27
58 E. Main Street	44.28

As noted above, the Commission should weigh this requested density against the overall contribution of the project to the quality of the downtown economic and aesthetic environment.

Based on recent discussions at both Planning Commission and Council meetings, the following density calculations are also provided. In terms of bedrooms per acre, the 74 bedrooms proposed for the Lofts at Center Street plan calculate to 87.47 bedrooms per acre. For comparison purposes, recently approved multi-unit developments have the following bedroom densities:

<u>Projects</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5
Kate's Place & Choate Street Townhomes	59.3
58 E. Main Street	95.3
102 E. Main Street	62.5
108 E. Main Street	58.8
129 E. Main Street	105.9
132 Delaware Avenue	104.3
One South Main	83.6

Status of Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process, color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, as you can see from the Lofts at Center Street Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan, supporting letter and applicant's color building elevations, the proposal calls for the demolition of the existing buildings on the site to allow for the construction of a new mixed use building with first floor parking and 3,000 sq. ft. of office space, and 30 two- and 3-bedroom apartment units on the second, third and fourth floors. The apartment mix proposed is: 16 two-bedroom units and 14 three-bedroom units for a total of 30 units. Parking is proposed underneath the building on the first floor and on the north and south sides of the building. Parking is accessed via Center Street for the 15 spaces fronting on Center Street including two handicapped spaces, and the remaining spaces are accessed via a new access way and a 22 ft. wide private driveway to reach the parking in the rear underneath of the building and the five spaces situated north of the building. A total of 70 parking spaces are provided, which meets Code for the uses proposed.

Please consult the applicant's submitted elevation drawings and supporting letter for additional information concerning the proposed architecture and site design. To evaluate the proposed architectural design, the Planning Commission should consult the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix XIII (d).

Please note, in this regard, that on a voluntary basis, the applicants reviewed the proposed project's elevation drawings with the Downtown Newark Partnership's Design Committee. The Committee used the Downtown Newark Partnership's Design Guidelines for mixed use buildings in downtown to evaluate the project. In general, the Committee assessed the development as meeting the Design Guidelines, except for two criteria in the base layer: height and overall proportion. For these, the Committee notes that while the height and the overall proportion of the site meets the zoning requirements of the BB district which is sought, the building is much taller than the nearby buildings and is a large, single mixed use commercial/residential multi-family dwelling in a predominantly detached housing area. Having noted these differences, the Committee indicated that in particular, that liked the bike storage opportunity created by the plan, and that the architecture was a

good use of bays and materials to break up a linearly large building. Overall, the Committee endorsed the project, but recommended that pavers or other materials be used for the driveways on Center Street, instead of the proposed blacktop.

Special Use Permit

Please note that the applicant needs a Special Use Permit for the 30 proposed apartments in downtown.

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit providing that the applicants demonstrate that the proposed use will not:

- “A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the Comprehensive Development Plan of the City.”

Fiscal Impact

The Planning and Development Department has evaluated the impact of the Lofts at Center Street project on Newark’s municipal finances. The estimates are based on the Department’s Fiscal Impact Model. The Model projects the Lofts at Center Street development plan’s fiscal impact; that is, the total annual municipal revenues less the cost of municipal services provided. Based on the Model’s estimate, we project the annual Lofts at Center Street net revenue to be \$9,372.

Please note that the current fiscal impact of the site is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note that there is no difference between the first and future years’ estimates because the applicant already owns the properties, and therefore, there is no anticipated real estate transfer tax in the first year from the sale of the Lofts at Center Street.

Traffic and Transportation

At the request of the Planning and Development Department, the Delaware Department of Transportation (DelDOT) has reviewed the Lofts at Center Street Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan. The Department indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which is 400 trips per day and 50 per peak hour. Having said that, and recognizing that Center Street is a City owned and maintained street and beyond DelDOT’s jurisdiction, they recommended that the City require the engineer to demonstrate, using turning templates, that the site can accommodate the largest vehicles that would circulate through it. Of particular concern to DelDOT in this regard would be delivery vehicles for the commercial portion of the building, and the residential vehicles entering and exiting the rear garages of the area. (Note: the plan reviewed by DelDOT showed an 18’ wide access drive in the rear of the building. Based on comments for Public Works and Water Resources, the driveway was widened to 22’ and should, therefore, eliminate the rear garage existing concern).

Subdivision Advisory Committee Comments

The City Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments has reviewed the proposed Lofts at Center Street development plan and has the comments found below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

Electric

1. No trees over 18 feet at maturity may be planted under power lines.
2. If the building interferes with the City's smart metering system, the developer must pay to remedy the issue.
3. The Developer must pay \$18,500 towards transformers, meters and on-site materials. One half or \$9,250 of this fee is due before the first building permit is issued. The remainder will be due prior to the first CO. In addition, there will be a \$300 fee for commercial meters. All costs are subject to CPI adjustments.

Parks and Recreation

1. For the two trees located in the sidewalk easement, tree pits and a grate system to mirror those on Main Street are required. The "up-lighting" (in Main Street tree pits) will not be required.
2. The tree in the narrow area in front of the building should be moved to the "west" landscape easement. Likewise, the tree in front of the building with the transformer and bike rack should also be relocated to the "west" landscape easement.
3. In order to ensure species diversity in the area, the ten (10) Emerald Sentinel trees should be changed to Vermeulen Yews; and the six (6) Crepe Myrtles to either Franklin trees and/or Sourwood trees.

Police Department

1. Residential parking is a concern in the area. Residential parking permits will not be issued, nor will guest passes be provided for this development.

Public Works and Water Resources

Water/Wastewater

1. Water meters for each unit must be centrally located and installed at the developer's cost.
2. STP fees are due prior to the issuance of a CO for each unit.

Public Works

1. Trash pickup will be privately provided. More details on how the dumpster area will function and how it will be enclosed and screened will be necessary prior to Council consideration. (Note: more discussion on the dumpsters is included in the Planning and Development Department comments).
2. Due to the multiple utility patches necessary on the long linear patch in front of the new curb, the developer will be required to either repave Center Street for the entire frontage of the project (or escrow or bond the monies to repave it) before the issuance of the first Certificate of Occupancy for the project.
3. The engineer for the project has indicated that the plan has been verified to meet truck turning radii using an Aetna Hook & Ladder Company aerial Tiller model truck (11' inside turn radius and 28' outside turn radius). A copy of this analysis should be forwarded to the Department before Council consideration.
4. The department will have additional comments during the CIP process.

Planning and Development

Code Enforcement

1. The building shall be designed and constructed in accordance with the IBC Codes as amended and adopted by the City at the time of submittal for plan review. Likewise, the IFC or DE State Fire Prevention Regulations, whichever is more restrictive, will apply.
2. Four (4) handicapped parking spaces are required for the development, one of which should be located under the building. Only two exterior handicapped spaces are

identified as provided. The plan should be revised to show all required handicapped spaces prior to Council review.

Planning

1. As previously noted, the parcels are zoned RS and part of the New Center Village (NCV) overlay district. The overlay permits the underlying RS zoning uses, as well as other uses under a parallel set of special provisions and conditions. When the NCV overlay was adopted by Council on June 14, 2010, the long-term goal for the overlay district was “... to create a relatively high-density, attractive residential neighborhood for owner-occupants seeking a college town urban lifestyle with immediate proximity to shopping, services, nightlife and a lively downtown ambience.” Further, the proposed optional overlay zone was intended to link zoning flexibility with rigorous design criteria rather than adding or modifying the restrictions in the underlying (RS) zone in the New and Center Streets area. NCV allows a maximum density of 30 units per acre, and requires that all new development be subject to site plan approval. Site plan approval permits area regulations to be waived, with Council approval, for plans with excellence in site design and arrangement. In addition to the above, all properties redeveloped under the overlay district are limited to a maximum of two unrelated tenants.

In addition, and as previously noted, the Comprehensive Development Plan's land use guidelines, which, in general, follow the zoning of properties, calls for medium-density single-family detached residential units at the site and advises caution when adding more residential units downtown. Further, the Plan's economic development strategy report indicates that the area for which the Lofts at Center Street proposal is designated as a rehabilitation area for single-family homes.

Therefore, the requested rezoning and comprehensive development plan amendment are a significant departure from both the current zoning and the comprehensive development plan guidelines. A policy decision is, therefore, necessary to determine how to proceed. Previously, the city slated this area for higher density residential uses than the RS zoning would permit in exchange for owner occupancy; and indeed, the comp plan reflects this through land-use recommendations and the economic development plan. On the other hand, the New Center Village overlay district has been in the City's Zoning Code since June 2010 and no one has yet to take advantage of it. When the department has discussed the overlay zone with potential developers the response has routinely been: 30 units per acre are not enough to fund an owner-occupied (condo) development at the site, especially given the site design conditions – or more often, the banks are not lending money for owner-occupied developments.

In addition, as one looks at Center Street, its composition and its proximity to Main Street, a portion of the street is already zoned BB. Specifically, the south west corner (the post office fronting on Main Street), the mixed-use building at the corner opposite the post office (southeast corner), municipal parking lot #4 which has an entrance off Center Street, and the non-conforming, six unit apartment building across Center Street from the site are all already zoned BB. While the remainder of Center Street is zoned RS, it contains a nonconforming duplex of two apartments with three bedrooms each and another municipal parking lot entrance (Lot #3) on the west side, and single-family residential rental units. There are presently no owner-occupied dwelling units on the street and given the current economic conditions and property sales values within this proximity to downtown, a return to owner-occupancy, even with the increased density of 30 units per acre permitted by NCV, seems unlikely in the foreseeable future.

From a planning perspective, the proposed use, regardless of the zoning requested, is mainly a residential use in that the proposed office space is only

3,000 square feet of the four story, approximately 13,440 +/- square foot footprint building; the concern would be for allowable density and permitted office uses, both of which are addressed in comments below.

Therefore, the Commission, and ultimately, City Council will need to determine if expansion of the BB zoning designation, and a change in the land use guideline's designation in the Comp Plan makes sense at this particular location. The verbiage in Comp Plan IV makes it clear that as a tool the Plan is "... not proposed as a warranty against alternative decision making when public needs or experience change ..."and therefore, Comp Plan amendments and rezonings may be necessary from time to time. In other words, if the Commission, after review of this report and consideration of the applicant's presentation and public comment, believes that the development as a whole is of benefit to the Newark community beyond the existing single family rental uses at the site, the Commission should recommend approval. The reverse is also true.

2. Regarding the proposed office use, should the Commission recommend approval of the development, to insure the residential nature of the building, the Department recommends that the property be deed restricted, prior to the approval of the Construction Improvements Plan, to prohibit the following BB zoning permitted uses:
 - (1) Retail and specialty stores.
 - (2) Retail food stores
 - (3) Restaurants of any type
 - (4) Finance institutions, banks, loan companies.
 - (5) Personal service establishments.
 - (6) Repair and servicing, indoor and off-site, of any article for sale which is permitted in this district.
 - (7) Related indoor storage facilities
 - (8) Photo developing and finishing.
 - (9) Motels and hotels.
 - (10) Commercial indoor recreation and indoor theaters.
 - (11) Tower, broadcasting and telecommunications installed on existing buildings or structures
 - (12) Church, or other place of worship, seminary or convent, parish house, or Sunday school building.
3. Regarding the requested density, as the applicant is proposing an increase from the 5 rental units currently at the site with the RS zoning occupancy restriction of 3 unrelated residents (resulting in 15+/- individuals residing there) to 30 units, with a BB zoning district restriction of one family or four unrelated individuals for the two-bedroom units only (or 16 of the proposed 30 units), resulting in a minimum of 120 people allowed to reside there; and further considering that the Rental Housing Needs Assessment Study results are not yet available, the department believes the development as proposed to be too dense.

Specifically, considering the densities of BB zoned mixed use buildings in the general vicinity of the site (102 East Main Street – 20.83; 108 East Main Street – 14.71; 124–126 East Main Street – 16.5; and Kate's Place and Choate Street Townhomes - 25.02), and recognizing the these same four mixed use developments being compared required significant parking waivers to accommodate their development, and further, while the Lofts at Center Street proposal meets Code for parking at the density requested (which, frankly, is highly unusual for a BB zoned project), the department suggests that the density of the building should be reduced somewhat. Our suggestion would be a reduction from the 30 units requested to 22 units, making the density equivalent to what the NCV overlay zone would permit (30 units per acre). Further, to reduce the impact of the potential occupancy of these units, the department recommends that the entire site, regardless of the number of bedrooms provided in an apartment, be deed restricted to permit only 4 unrelated individuals per unit. This reduced occupancy suggestion, if recommended by the

Commission, may question the need for 3 bedroom units at the site, and perhaps, reduce the overall project size. The Commission may wish to discuss these recommendations with the applicant at the meeting.

4. Regarding parking at the site, the Department has previously noted that the 70 spaces provided meet Code for the uses as proposed. Having said that, double stacked parking is only suitable for residential uses, and should be assigned as such. In addition, because no guest parking spaces are available for the residential (office) uses, the 10 spaces required for office use, should be reserved for those uses during hours of office operation. A parking assignment plan should, therefore, be presented as part of the CIP.
5. The consolidation of the trash and recycling area with the residential and commercial trash and recycling of the 102 E. Main Street development and the residential portion of the 108 East Main Street property is a benefit of the proposed development. Trash compactors for this area will be required and will significantly clean up the north east corner of municipal lot #3 and result in at least one, possibly more, parking space(s) added back into the municipal public parking inventory. In addition, to limit insofar as possible the trash and recycling needs of the commercial space in the 108 E. Main Street building (which is under different ownership) on municipal parking operations, the applicant should discuss combining trash and recycling services with the owner (of that commercial space) to provide a consolidated trash and recycling center for all uses at the Lofts, 102 and 108 East Main Street. That consolidation would result in additional parking spaces returned to the municipal parking inventory. Regardless, the trash and recycling needs for the Lofts at Center Street, when combined with other holdings will not be permitted to impede any parking spaces in municipal lot #3. In other words, should negotiations with the owner of the commercial space of 108 E. Main Street fail, trash and recycling to serve the new development cannot take up any more room than is currently allocated for such purposes in the municipal parking lot; and a location on the Lofts site to accommodate trash will be required. Finally, concerning trash compactors the applicants should consider front loading compactors like the one currently being used at the renovated Mc Donald's building on Main Street. Front loading compactors will allow trash service via the new Lofts at Center Street drive from Center Street, thereby saving wear and tear on the municipal lot – another added benefit of the development.
6. Finally, the Planning and Development Department suggests the following regarding subdivision site design conditions:
 - The architectural design of the proposed façade should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - The plan area lighting should be designed to limit impact on adjoining and nearby properties.
 - The building should be designed to allow for future conversions to condominiums.

Recommendation

Because with the Comprehensive Development Plan amendment, the project will conform to the land use guides of the Comprehensive Development Plan IV, and because the rezoning, major subdivision and special use permit with the Subdivision Advisory Committee conditions should not have a negative impact on adjacent and nearby properties, and if following the Planning Commission's review of this report and consideration of the applicant's presentation and public comment, the Commission determines that the project is compatible with downtown Newark in terms of design, scale and intensity of development,

the Planning and Development Department suggests that **the Commission take the following actions:**

- A. Recommend that City Council revise the existing Comprehensive Development Plan IV land use guides for this location from “single family residential (medium density)” to “commercial (pedestrian oriented)”;** and,
- B. Recommend that City Council approve the rezoning of the .846 acres from the current RS (single family residential detached) zoning to BB (central business district) as shown on the attached Planning and Development Department Exhibit A dated October 7, 2014;** and,
- C. Recommend that City Council approve the Lofts at Center Street major subdivision and special use permit plan as shown on the Karins and Associates Engineering plan dated May 5, 2014 with revisions through August 29, 2014, with the Subdivision Advisory Committee conditions.”**

Ms. Feeney Roser: I apologize for the length of that report, but it is a fairly complicated project so I wanted to make sure, for the benefit of those in the audience, that we covered all the salient points. I will be happy to answer any questions that the Commission may have for me and I know the applicant is here and ready to present.

Mr. Silverman: This is part of the changes I want to bring about. The Chair entertains a motion that the report of the Planning and Development Department be accepted, not the conclusions, just receiving the report and in addition verbal comments were made.

MOTION BY HEGEDUS, SECONDED BY MCINTOSH, THAT THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT BE ACCEPTED.

VOTE: 6-0

AYE: BRILL, CRONIN, JOHNSON, HEGEDUS, MCINTOSH, SILVERMAN

NAY: NONE

MOTION APPROVED UNANIMOUSLY

Mr. Silverman: The motion carries and the report is accepted and is on the record. Now we will hear from the applicant.

Mr. Jeff Lang: Lang Development Group, 13 Spring Water Way. It is a pleasure to be here this evening. Ms. Feeney Roser did a nice job in explaining the proposed development.

Let me give you a little additional history. We acquired the site about two years ago. When we acquired it, we started thinking about the opportunity to build some type of project at this location. The other potential buyer at the time was Greg Lingo, who we have been working with on a number of projects. He is a residential builder and had started trying to design a condominium type project here. Obviously, we are involved with him in another condominium project and we have had some limited success there. But, one of the interesting evolutions of that was trying to come up with a building design that could be converted in the future, and that is why we incorporated a lot of the details that he started with when we ended up with this project.

To give you some of the ideas that we started with, we started with two buildings with a courtyard in the middle. We had two larger buildings with parking on either side – parking, building, courtyard, building, parking. We went through a number of design criterias with that trying to figure out the density, trying to figure out how interesting the courtyard park area would be. Unfortunately, the buildings, to get any reasonable density would be five or six stories. So, obviously, to get five or six story building is much different than a four story building, but you do introduce some common courtyard park areas, which are a big topic in a lot of Council and Planning Commission meetings when we talk about green space in downtown. Unfortunately, we could not get any seemingly good traction when we started working on that in a final design with members of staff

when we started talking about with building design. With the NCV issue with thinking about how to cater a project around some of the criteria of the NCV ordinance for the idea of architectural design and residential nature of the building. Obviously, we are directly adjacent to BB zoned property. We have developed a number of those BB zoned buildings and there continues to be a tremendous need for commercial growth in our downtown area. Unfortunately, we have a limited commercial development area because we only have one main street that you can do commercial development on. As you know, we have expanded some of the offerings down South Main as we just recently completed a building across from the Deer Park that we were here a couple of years ago seeking approval for.

One of the things that we talked to Maureen and her staff about regarding this site is what is a logical reuse of this site? Obviously, presently it is a rental community; and should it be an attempt to transition to BB into a more residentially natured building, which is kind of where we ended up with this particular architect. But, we actually started with a different architect. We developed a couple of different plans, one which I told you about, was the five or six story multiple building plan patterned after some things that we had seen in other settings – Chicago, Baltimore, New York, Ann Arbor – they are building larger buildings in their downtowns to capitalize on the opportunity to have green space. However, we don't have that flexibility presently in our Zoning Code. There is some flexibility, there just hasn't been anyone embracing the flexibility yet. So, we ended up working with a group out of Philadelphia (Barton Partners). We went up and saw some projects that they did around Villanova and some other college settings up there, which are very, very similar to this. They have done, probably, 10 or 15 mixed use projects in the Philadelphia suburban area. They kind of have a softer residential feel and we thought that was very important for the transition from Main Street to the Center Street area, as well as the University property through Center Street into New Street and the balance of Choate Street and balance of the area we are really encompassing.

One of the main features we started working on, and as Maureen will tell you, we had a project that was a little bit larger than this. It was 36 units when we started. It had 36 individual garages. We actually have reduced it in scale from the original submission on May 14th due to some comments that we have tried to address at the staff level before we came to you. One of the big selling points we really think about this project is the pedestrian feel of this building. This building actually sits 20 ft. back from the street. There is a nice area in front of the building, especially in front of the office portion of the building. There is a walk-through of the building, which gives it a nice pedestrian scale. And, we have also, as you probably would remember from our coordination of the University when we built One South Main, we have had a cooperative discussion with the University about modifying their access points to Frazier Field, which they have spent millions and millions of dollars on, for the benefit of the University community, and hopefully, more so, the entire community. That is part of the University policy as to whether they will agree to have unlimited access to that field. We think buildings like this will create that type of synergy. So, we have already had some ongoing conversations with them about landscaping, possibly building a wall in the back of our building. And when you look at our site plan, it is really the back portion of the site here where we have a walk-through. Their fence is actually back in here where these light posts are and there is another 15 or 20 feet before you actually get to their field. So, we have talked to them about creating some type nice wall and access walkway up there, which would be a nice dramatic entrance to their field through our building, which would really be a benefit for us and a benefit for them and a benefit for the community. So, we think that is a coordinated effort that we want to pursue and continue to pursue independent of our individual project.

One of the other things we talked about with Barton was when we are looking at the building, the building is approximately 280 ft. long and the massing of the building actually looks a little bit better between the four and five story area because of the length of the building vs. the height of the building. The overall site that we are dealing with is about 400 feet. So, it is a very long linear site, very similar to Pomeroy Station. Pomeroy Station is a building that is about 300 feet long and you need to have a certain type of massing with that type of building. Obviously, the pitch is important. We didn't want to go with a flat roof. We wanted to incorporate a number of features which,

actually, make the scale of the building more appropriate. When we met with the DNP Design Committee, we didn't hear any of the negative comments about size and scale because we have not seen the report yet and one or two of the Committee members mentioned that they had an issue with that, but the overwhelming majority actually thought it was a very well designed building.

The other feature that we want to talk about because this building is very important in its location is that there is no front or back to this building. Obviously, there is when you look at it from the street, but the thought is that we are going to have as many or more people looking at the back of the building as look at the front of the building. The back of the building, as you can see, has a very good architectural design that is carried throughout the entire four elevations. Some of the projects that have been done around town recently don't have that same attribute, which we think is something that is a little bit of the shortfall in some of the architectural design that is happening. We tend to think that this building needs to be approached from all sides –the Frazier Field, the turf field access point and the visibility there.

The other thing that this building allows us to do and allows the community to do on the other side of our building is to buffer ourselves and the balance of the community from Frazier Field. As you know, there is a lot of activity there. They have large light posts there. If we build a smaller building, that doesn't allow that buffering to happen.

From a density perspective, I know Maureen has talked about if possible, additional reductions to 22. We have been trying to figure out when we laid the building out, the building footprint is about 1,300 feet. So, when you put stairways in, hallways in, you end up with about 1,000 sq. ft. per unit, 10 per floor. A 1,000 sq. ft. lends itself very well to a two-bedroom unit, possibly a small three-bedroom unit, but we don't have a problem with an occupancy of four per unit. We have been very successful at One South Main with a similar design. We have units that have three bedrooms for three or four people and two bedrooms for two or three people. The density restriction doesn't bother us with that type of layout. The problem is, if we are talking about reducing our unit count to make the density work better, we end up with larger units. We had the exact same problem at 132 E. Delaware Avenue. When we went through the process there, we kept saying that the footprint of the building is 8,000 sq. ft. We think we should have 14 units. Council ended up approving 12. We ended up with units that were much larger than we thought we were going to end up with. If you put up larger units, you end up with more common space in the unit, which then ends up becoming more of a management issue.

Also, convertibility for sale for convertibility, we think the 1,000 sq. ft. unit is very convertible. It has its own individual garage. An individual garage provides individual storage and individual potential property ownership, which we think is a very good selling point in the downtown area when the financing environment changes a little bit. Presently, right now, with condo buildings, you need to have a number of a presold to meet the underlying financing criteria to allow anyone to purchase another unit. We are going through that with another project we have. We have to have 50% of them sold to cash buyers before you can actually have a unit sold to a buyer that is going to have a mortgage. So, if you have a project that has 30 units, you need to presell 15 or 16 of them. So, that is one of the big huge barriers when you are trying to do a condo project in today's financing market. But, what we've thought about and continue to think about when we want to build these buildings is, what the ultimate reuse is. We have designed a building that we think provides a great transition from downtown into the residential component of Center Street. It also allows us to provide an opportunity for long-term convertibility into home ownership here, which is really the intent of what that area was supposed to be. Unfortunately, it is not an opportunity right now, but if you don't build a building like this or similar to this here, you are never going to have that opportunity to convert.

Chris Locke with our office is here and Tim Anderson with Karins. The only comment we want to talk about is the first floor office space. We looked at the design and we had a thought of transitioning into a larger commercial area, and one of the building designs we had at one point was more like 108 E. Main Street where we had first

floor, second floor, commercial, third floor and fourth floor residential. It is very similar to One South Main. The question is, you introduce too much commercial into that area down there, it does lose its entire residential component feel. After rethinking this and thinking about this design and layout, we actually thought about moving our office into the first floor there and transitioning that office space into Lang Development's main corporate offices. We really didn't want to introduce too much commercial because of the conflict with the NCV and the intent of the overlay. Obviously, the residential component of this building looks much more residential than a commercial building. 108 E. Main, where IHOP was, is a much more commercial looking building. This building, we think, really fits in a transitional area. Obviously, we are here for any questions. Thank you.

Mr. Silverman: Any questions from the Commission?

Mr. Hegedus: You said you thought about a lot of different possibilities before you came to us with this and you tried to work with the NCV overlay. What were the biggest obstacles that you had in making that work in this case?

Mr. Lang: The interesting part about NCV is when it was developed there was this idea of a bonus density which really isn't a bonus density because the Zoning Code allows for up to 90 units per acre if it is owner occupant. And, the NCV was written, as 30 units per acre, which doesn't make a lot of sense as an overlay district if you are trying to promote owner occupancy. So, if I actually came in with owner occupancy and I was going to build condos, I would be restricted to 30 in the NCV whereas in the normal BB district I would be allowed 90, right Maureen? So, there was not as much thought process in how the NCV was developed as it related to the balance of the density issues around town and this particular site's proximity to BB. BB zoned properties directly adjoin the site and we really think that this is a logical transition to this area. From an NCV perspective, we actually meet many of the criteria from architectural design, pitched roofs, and height of the building. A lot of the things that we are pointing towards in this building are very NCV directed and that is where we kind of tried to transition our design and cater it to meeting some of this criteria. There are 30 garages, 30 units. One of the discussions if we reduce the density to 22, what do we do with the other eight garages? Now we have these garages, what do we do, rent them to someone else? Or, do we replace them with commercial space, which then defeats some of the transitional issues of how do we keep this predominantly residential? So, we put a lot of thought into how many garages we have, and parking spaces we have. Obviously, Maureen pointed out the difficulty of meeting the parking requirements in the BB district. We actually meet the parking requirements. One of our original proposals to Maureen actually requested a waiver. At one point it was 50 spaces and then it was 27 spaces, then it was 3 spaces and then we ended up with no spaces requested to be waived. We have actually modified this design just within the last three or four months, very much so, let alone the last two years when we started working on it.

Mr. Silverman: Are there any other questions?

Mr. Johnson: I am interested in residential downtown. I am interested in young professionals and I know you are gearing towards students here, but would you build it without any commercial space?

Mr. Lang: Maureen might need to correct me if I am wrong, but in BB you are supposed to have a commercial component on your first floor so we need to have some form of commercial component to meet the BB district. Would we need to build it? We won't necessarily need to build. We were going to move our office into and, technically, I think, Maureen might tell you that having a management office on-site is allowable on the first floor without having technically an office or pure commercial leasable space. So, the answer would be yes, but I don't know if it meets the Zoning Code.

Ms. Feeney Roser: The Zoning Code requires that the first floor either be used for commercial uses or parking. So, you could do either, but our Council has previously questioned why you would go with a commercial zoning if there is no commercial use there.

Mr. Johnson: You are asking for a rezoning for what purpose? You can't build detached homes. Is that what the current zoning requires?

Ms. Feeney Roser: Yes, RS is a single family residential zone requiring at least 9,000 sq. ft. per lot. The NCV overlay district does allow you to have certain modifications to that which would allow up to 30 units per acre, with some design criteria requirements. The rezoning here allows the parking on the first floor or commercial, with residential above it.

Mr. Lang: It is really a nuance of the Code, Edgar. I think it is more of how does this fit in the box. What we tried to do is look at the site, tried to lay out the building, and then met with Maureen and tried to come up with the Zoning Code to classify the building type we are trying to create vs. the other way around, which would be, here are the three things you can build. We kind of look at development as what should be here and then let's try to figure out how to cater it to what could work here. It is really a land use issue. NCV could be changed. Instead of doing it the way we went through, we could have requested that NCV be modified – NCV could be modified by Council – to permit this type of use and then we would have fit in the box. But, there was no box for this building to fit in exactly other than BB. And, what Maureen is trying to do with the presentation is deed restrict the first floor to a commercial use which is not evasive to the residential community, which is what our office would be or any normal small office user would be. It wouldn't be a restaurant user, it wouldn't be a pizza shop, and it wouldn't be one of those types of high activity commercial users. And, that is kind of how this project fits in the zoning box.

Mr. Silverman: Are there any other questions? Okay, as Chair I would like to make my comments, and I am going to work through the components or ask for in this particular presentation.

First, starting with the Comp Plan, this kind of development is not permitted in the existing Comprehensive Plan. The applicant has yet to demonstrate how it is in the public interest to add this traditional commercial and residential in the Newark area, let alone in that particular neighborhood. We've gone through, literally, a year's worth of Comprehensive Plan review. We, as a group, looked at this community as a whole. We looked at it in parts. One of the parts we looked at was the area outside of the Downtown Core in the Center Street and New Street area. We had public hearings. We had public workshops. There was no human cry to modify the Comprehensive Plan for, I believe, iteration 5, from what it is currently in iteration 4 that has been standing for a relatively long period time. So, as it stands right now, the new proposed plan calls for single family residential in this area. City Council further reinforced this in 2010 by introducing the – and I keep getting these initials mixed up – NCV concept to allow a little more flexibility to the market, to the style of residential units that went in there, but it still called the area a predominantly residential area realizing there are some nonconforming uses in there of small apartment houses.

We are in the midst of a study to look at rental occupancy, apartment usage, student housing, and all kinds of residential units other than what most people would consider standard suburban style housing. We have yet to come up with any results from that.

We also have a significant number of units of two and three bedroom units that are in the pipeline that are not constructed, that are waiting for building permits. We have a significant number that are under construction. The proposal, again, looking at the Comp Plan, I believe is not consistent with the goals and objectives of the Comp Plan. The Comp Plan calls for medium density. The overlay district allows a variety of housing types to be placed in that medium density meeting the kind of design standards that this particular project works toward. The word "housing rehab" is part of the goals of the Plan. I don't see this kind of redevelopment, tear down and put something else there utilizing the existing housing stock and rehabbing it and working with it.

The Comprehensive Plan talks about affordable and market rate housing. There has been no mention of any kind of subsidy in these units. Again, it appears to be housing that is geared more toward the student.

The City Council is on record with a multi-year goal to mitigate the proliferation of student housing in traditional neighborhoods. This is a traditional neighborhood. It happens to be an older neighborhood. I am going to guess by the architectural style, probably most of it is just pre and post-World War II. Incidentally, the infrastructure was put in at the same time, and I will get to that in a minute. It lies clearly outside of the Downtown Business Core. It is not a transition unit. The Business Core is oriented toward the main transportation routes, the various Main Streets we have, east and west and south. Granted, this Downtown Core backs up to other residential and use areas.

Ms. Feeney Roser: Excuse me, Alan. I don't mean to contradict you but it is within the boundaries of the Downtown Core District.

Mr. Silverman: Is it?

Ms. Feeney Roser: Yes, it is. The Downtown District goes back to the railroad track.

Mr. Silverman: Sorry, I misunderstood that. There is an award that sits out front. Newark got a National recognition as a Tree City and if you look at the drawings, there are a number of rather mature Oaks that are on this site that will no longer be there because the site is developed in this manner. In looking at the Comprehensive Plan again, one of the questions I asked was, would this cause a ripple affect posing future changes. The applicant speaks of boundaries and limits. I look at this as opening a door to the entire neighborhood along Center Street and New Street for a continuation of this particular style of activity. As I said before, the Comprehensive Plan update #5 generated virtually no public interest in changing any of the underlying assumptions for designations in this area, and even some of the discussion was oriented away from this area when looking and talking about potentials of expanding the Downtown Business District.

There have been discussions and presentations, rather, that the proposed BB zoning and the Village Overlay are kind of interchangeable. In my mind, they aren't. In dealing with zoning, the proposed BB zoning is not consistent with the goals of the Comp Plan nor is it consistent with the New Center Village standards. It wears some of the clothing, has some of the paint, but does not appear to have the core ideas behind that. I believe the BB use is not compatible with adjacent residential uses. There have been proposals that the commercial use that is part of the BB ordinance will be restricted. We have seen proposals like that before with respect to young professional communities that are marketed to students, apartments that are leased to universities for office space and classrooms, and that is what eventually turns up. So, unless items like this are included in deed restrictions or private letter agreements as part of Council, we can't always depend on the outcome being what is presented here.

In dealing with significant environmental effects, and I mean environmental in the broad sense, not necessarily trees and plants, I question sewer flows, surface drainage and traffic impact, the environment of the community, the living style of the community. The sewage system that was laid down along Center Street flows toward Main Street. The engineers have represented on their manholes what the bottom elevation of manholes were and indicates the drainage goes toward Main Street.

I asked the City whether flow tests have ever been done along that stretch. The answer is no. There was some communication back to me that the owner is responsible for doing flow testing within a certain distance, certain parameters of the structure. I did learn that the average daily sewage flow is about 300 gallons per day per dwelling unit. Six dwelling units, 300 gallons a day hit about 1,800 gallons a day flow. We are looking at 30 dwelling units – do the math – we are talking about doubling, almost tripling that flow. If we start dealing with bedrooms and people per bedrooms, we are talking about a potential of about 148 people on this site – somewhere around there. Take the 300 gallons a day, 2 ½ persons per household, 100 gallons per day per person, so all of a

sudden we are up to about 14,000 gallons a day of sewage flow, and I will be generous and assume that everyone living in those rental units, I should say the occupancy conforms to City requirements which would be, what, 3 unrelated individuals?

Ms. Feeney Roser: At this point.

Mr. Silverman: At this point. So, we have six properties with 3 unrelated individuals, about 1,800 gallons a day. Significant increase in sewer flows particularly when we talk about peaking and everybody flushes at the same time. There is a question in my mind as to whether that sewer system that is 60 years old can handle the particular flows.

Ms. Feeney Roser: Excuse me, Alan. I'm sorry to interrupt you because I know that you have done a lot detailed analysis but, first of all, the City has a professional staff on board who will review the sewage flows during the CIP, if this project is approved and require that capacity be provided. That's number one, but number two, I think we are a little bit out of order here because it doesn't sound like you are really asking questions, I think you are telling us what you think, and that is great, but I think that the Commission has a responsibility to hear from the public about what they think about the project and then come back to the table for Commission discussion, unless you are getting to a question for the developer. Generally, that is how we do it. The Commission asks questions of the developer, we hear from the public and then you come back and discuss it at the table. It sounds like you are giving the reasons for a potential vote on your part, to me. Correct me if I am wrong. I don't want to interrupt our new chairman.

Mr. Silverman: This is a learning process.

Ms. Feeney Roser: Did you want to continue or do you want to hear from the public? It sounds like you are toward the end of it. Maybe I should have made that comment earlier. Are you near the end of it?

Mr. Silverman: No.

Ms. Feeney Roser: What do you think?

Mr. Silverman: I'll reserve the rest of my comments for planning comments. So, we have heard from the applicant and shall we turn it over to the public, Maureen?

Ms. Feeney Roser: Normally, we would give the applicant an opportunity to respond to Commission at this point, and then hear public comment. I'm not sure how you want to do that since I interrupted you. Maybe I shouldn't have, and we could have asked the developer to address the whole thing.

Mr. Silverman: Do they want to hear the rest?

Mr. Lang: Well, no.

Mr. Cronin: Mr. Chair, our Guide here talks about public hearings; applicant's presentation, then Commission discussion and then the meeting is open to public comment. So, presumably, you are part of the Commission discussion.

Mr. Silverman: That is what I was relying on.

Mr. Cronin: I don't know how you want to go at this point.

Mr. Silverman: I will pick up the pace on this. So much for the sewer flow. Center Street is the only access to the north off of Main Street. I was out there on a number of occasions looking at this site and traffic flow is a real nightmare. Tractor trailers come off of Main Street, off-loading. I see no indication on this plan, would you be requesting that the on-street parking be waived?

Mr. Lang: We actually didn't request that but we brought it up to Public Works and they discussed how they wanted to waive it, I think, Maureen, is that the last discussion we had or do you want to put metered parking there?

Ms. Feeney Roser: We talked about it, but I don't think a definitive decision had been made.

Mr. Lang: It is not our domain to make that decision.

Mr. Silverman: You have parking bays that back onto the street.

Ms. Feeney Roser: Yes.

Mr. Silverman: They are not really driveways. I don't think they have any privilege like a driveway would. So, there would have to be no parking along there.

Mr. Lang: You can't park behind the car, no. The area that their discussion was about parking was up by the office space and whether it would be meter parking up there or not. Right now one of the issues with that street is there is parking on both sides of the street which actually creates a problem. So, by eliminating parking on one side of the street, we are actually improving the situation, if you think about it.

Mr. Silverman: Potentially.

Mr. Lang: Well, it is your position vs. mine. So, I'm more than happy to refute each one of your positions if you'd like to, but we could be here all night.

Mr. Silverman: Yes, we could be. I have a compatibility issue since the University of Delaware has no future land use planned that is generally publicly available. I'm looking at that property with a blank slate behind it. Right now, it is athletic fields. What is it going to be five years, ten years from now?

Ms. Feeney Roser: I think the University has recently made a significant commitment to athletic fields there. They have spent a lot of money there to do that.

Mr. Locke: They have spent over \$5 million. Mr. Chairman, with all due respect, you can't judge our project based on what the University may or may not do with their property 10, 15, 20 years from now. It should be based on the merits of our project as it stands.

Mr. Johnson: The Frazier family gave that property for athletic and recreation fields. They gave it in 1912 or somewhere around that time. So, I don't want to say it is deed restricted, but that was the covenant of use of the field.

Mr. Silverman: And, finally on the subdivision plan, and this is where some hair is going to come back up on the neck of the applicant, I see that site being occupied by a Washington House-like project, 60 feet tall. That is massive, on a lot that is 90 feet wide. That is massive. That is the way I see it.

(Inaudible – from the audience).

Mr. Silverman: No, you will have your chance when we are through our comments. The roof system, although it appears to be a decorative item, I don't know whether it is going to be a machinery floor, but it does have dormers. Does that indicate that there is a potential for future additional residential units?

Mr. Locke: Can I respond to that?

Mr. Lang: We're not allowed to respond?

Mr. Silverman: You will have your chance to respond when I get done with my comments, so, take notes. You talked about some kind of arrangement with the

University on the land behind that. Until there is an agreement in place, I won't even take that into account in my deliberations. I believe there will be burden of on-street parking since the parking spaces just meet the minimum Code requirements for the square footage that is involved. Where do the friends, neighbors, people off-loading, or parents park? There appears to be no guest overflow and here you've talked about removing additional street parking. The potential reliance on the City parking lot, I've (inaudible) the City again. They have indicated there is a capacity problem there because of the private land arrangements. There are a great number of what appear to be available public parking places that are already pre-leased and committed. So, that lot cannot be counted on as overflow, and, again, until there is (inaudible) agreement in place for the trash recycling, the compactor, who is going to own it, who is going to maintain it, I would like to see that as a private letter agreement as part of this or part of the plan whereby when it goes to City Council, we can count on that agreement being in place. With regard to the special use permit, the only reason we are having the special use permit application is because of the BB project, even though the BB is conflict with the Comprehensive Plan. As Maureen said earlier in her comments, this is not an easy project. And the irony is, when you made your commitment to it, you knew the difficulties that were involved and decided to move forward. I will reinforce, we saw no one come before the group with respect to the Comprehensive Plan amendment asking that the Comprehensive Plan be changed in this area throughout the update process. So, we could have had this discussion in a more informal back and forth manner. And those are my comments.

What I would like to do is open the floor up for public comment. You have heard some of the comments of the Commissioners as well as my comments and somewhere here is the list. I'm going to take these in order as they were presented to us.

Mr. Jerry Gravatt: I am the owner of 24 and 28 Center Street directly across the street from this project. First of all, its scope in size is massive, and it, quite frankly, doesn't fit the character of anything on Center Street. When this thing is done, if it is built like that, you stand back and look at that and then you turn around and look the other side of Center Street, they are two completely different communities. It doesn't fit. As I heard Maureen say earlier, the NCV overlay, nobody has acted on it. It was enacted in 2009/2010. We were in the throes of a recession so a lot of people weren't doing anything then. My concern is the traffic. 120 extra people up from 16 now. It is already a nightmare on Center Street. If you add that many people whether they bike, walk or drive a car, it is formidable. If you want to do that to the other side of the street eventually, it just can't handle it. It is just so many people. Increased density. That doesn't fit the neighborhood. Parking, if you build that building there, it is going to eliminate all the parking on that side of the street. That cuts on-street parking in half for the entire Center Street. So, in summary, I would like to say I am opposed to the project.

Mr. John Hornor: Washington House. I'm probably going to repeat some of the things you said but, some of my concerns are once you change the zoning, if you allow the zoning to change, I just agree that you are going to set a precedent that is going to take the rest of everything from Center, New and Choate Streets to become BB. So, you might as well just do the whole thing at once, if that is what you really want to do. If you do it once, you've set a precedent and then it is going to affect that whole area because that is the New Center Village. It is either one thing or another.

Right now I know there might be a few owner occupied places in that community, but most of it, I would say, is student rentals right now. And, of course, it is very good for the businesses downtown when they have all those student rentals there and they all shop downtown. However, that is only eight months of the year. The other four months of the year, if you ever walk through that area, it is a ghost town. During the summer and in January it is a ghost town because it is all student rentals and nobody is there. So, adding another building is just going to be another ghost town. Unless you eventually get people to start living there year round, that's not going to change.

One of the concerns I had was, you talk about the sewer. The other one I have is storm water. Right now based on the plans you are going to lose a half acre of permeable surface and you are losing all those big trees which suck up some of the water also.

Where all this water goes when we have some of our major downpours, you tell me the pipes flow from Center Street to Main, well, that is a concern because as a lot of people may know where Main Street and Center Street intersect that is an area that floods during every major downpour we have. The water has gotten high enough to lap into all the storefronts on Main Street. I've watched it a number of times. The last time we had a heavy downpour like this we actually had the backup of the water in the bottom of Washington House garage. It came up through the floor there which is our storm drain in the parking lot. So, my concern is unless we have a good plan for how we are getting rid of this storm water, I think this is going to add to the storm water problem that already exists.

We mentioned the trees, they are nice trees that we are going to lose. I am not trying to be funny but there are a lot of birds that roost in those tall trees. I am one of those people that are on the high level so I'm looking directly at that. There are a lot of crows and ravens that I know people may not like but, they do help to clean some of the debris leftover in the street that goes on.

We already mentioned the traffic. A couple of people mentioned that, but I agree, there is probably going to be, at least just from the residents, because of the parking, you are going to have 50+ more cars down that street than you have now and then whoever else. So, that is not going to help either. If I was living on the street, I wouldn't be very happy.

And, the last thing is the overbuilding of apartment units that was already mentioned. We have a lot of apartments built all over. I grant the developer that if I was a student and I was looking for housing, this would be a prime spot. I would love to be living right there. But, I think part of the concern from the City's viewpoint is with all the apartments going on downtown, eventually, the apartments on the outskirts, somebody is not going to be able to fill these. We have added more apartments in the last two years that have been approved than were done the previous ten before that. Just keep that in mind. Thanks.

Mr. Eric Mayer: Eric Mayer, 92 E. Main. My sisters and I own a piece of property on Main Street, behind Abbotts shoe repair. It is part of a parking lot. You don't have anything to do with it but we do. Over the years I have seen the City approve projects, and approve them, and approve them, and we lose less of that parking space for our tenants, for the people who work there. It just gets worse and worse. As I look at this project, it apparently has enough parking spaces for it. I may disagree. I think you really need to look at the number of bedrooms and the number of beds in the bedrooms. You may be able to restrict to four. Who's going to police it? There is going to be the overflow parking and guest parking and it's going to come into our parking lot and our people aren't going to have room to park. I don't care what you do, it is just too big of a building and too many parking spaces that are going to be needed for these people and it is going to take away more of our spaces in our lot. My sisters and I, we have discussed this and if these continues, we really are thinking about taking our parking lot back for our building. I want you to just think about that. I has got to come to an end at some point where there are waivers and parking passes and this and that for these projects. I have nothing against this if there is just enough parking for it.

Ms. Leslie Purcell: I'm at Old Oak Road in District 1 and I have some similar comments. I just took a walk around over that area today and I noticed those large Oak trees and a lot of it is vegetation that provides a lot of habitat value and there is a lot of green space there that will be lost. I think you know we are working on storm water runoff issues and as mentioned, that is a big part of this. If there is that much more pavement and impervious surface you lose the ability of water to sink into the ground. You lose the cooling effect of the canopy of these trees – the much smaller trees only up to 18 feet, I think it said, doesn't provide the same kind of shade, nor do they clean the air in the same fashion. So, I think these things are important. There is a lot more heat generated also when you've got this much pavement and a large mass of building. I think, at least, in some parts of the country that is an issue that has to be addressed when you are looking at permitting and those kinds of things.

It also seems like we should be waiting until the Rental Housing Needs Assessment is finished and I know there is a meeting within the next couple of weeks on that.

As mentioned, there are already many, many projects in the pipeline and it is just sort of putting the cart before the horse to go ahead and keep permitting things that we really don't know if they will be needed. Hearing Mr. Lang say, well, possibly in the future this could be changed to maybe a condo project. Again, that is very speculative.

Overall, I think the height and the density is way too much as was mentioned by several people for this neighborhood. Historically, it is a much more small single family or duplex type situations with yards and a lot of green space. I would like to ask, if we are going to have this type of densification in building, there should be some kind of mitigation for the loss of all that open space. It is a public amenity whether we walk on the grass or not. If we are in the neighborhood, we get to breathe the air that is a lot cleaner and we don't have the runoff problem when we have that kind of vegetation. And, I support possibly a moratorium or at least slowing down this process until the Housing Needs Assessment is done.

Mr. Silverman: Is there anyone else?

Ms. Donna Cox: I own 94 and 96 East Main Street. Actually, I am not going to speak towards the building. I am going to speak towards the Council. About a year ago, it came before you about when they put the exit out onto Center Street from the parking lot that it was passed with the ordinance that you are not able to make a left-hand turn. Everything had to be turned right out of that parking lot. So, with adding this amount of construction and occupancy, I guess my question is to you that obviously this is going to have to change because there is no way that Main Street is going to take everybody going out onto Main Street. I just wanted to bring that up because I think it is an option that needs to be looked at now that you are considering such a large building on the end of that street, but yet just to put the exit out of the smaller parking lot, it was passed as an ordinance that you had to make a right-hand turn, thinking of that community.

Mr. Silverman: Is there anyone else?

Ms. Feeney Roser: Should we let the applicant respond to questions particularly the storm water management?

Mr. Silverman: Mr. Lang, your group again, please. If you would like to respond to my comments and the comments of others.

Mr. Lang: Thank you for the time. I don't know if we can respond to every individual comment, but as it relates to some of the concerns that were voiced with regards to storm water management, we have just been working with the State and we are one of the few potential new projects that would be under the new State Regulations, and the new storm water regulations are very, very restrictive. It used to be you could release as much water as you release presently. Now you have to release 30% less water. So, development actually improved storm water management, if you can believe that. That is what the State's criteria is, and Tim will tell you that. It is very, very hard to create a development project that releases less water than is presently released. However, that is the criteria. So, believe it or not, we have met with the Public Works Department, we have addressed all the concerns, and we actually are working through an approval for storm water management which is acceptable under the new State Regulations, which are more restrictive than the regulations were last year.

Mr. Silverman: I believe I saw that represented on your plan by subsurface storage or something along that line.

Mr. Lang: The majority of it is subsurface, yes.

Mr. Silverman: Okay, so there won't even be the kind of run-off that people see now from the driveways and the sidewalks and the rooftops and the roof drains going down the street.

Mr. Lang: That is the regulations that you need to adhere to now.

Mr. Silverman: Okay, thank you.

Mr. Lang: Any development in town has to do that. So, no matter what we build here, we would actually have to improve the situation by 30% over what is present. Sewer flow, there are some new people in the Public Works Department who are very concerned about very similar issues that you have brought up and we have already been through them. Typically, we don't go through them until a much later point in the process, but one of the reasons why we weren't here two or three months ago was that they brought up a number of these issues which we've already addressed to their satisfaction. So, I can't tell you how much sewer flow we have now vs. how much we are proposing to have, but they seem happy with it being able to handle it in the existing system.

Traffic, a number of people brought up traffic and issues on Center Street. Obviously, Center Street does have somewhat of a connection back to Chapel Street and when you do try to exercise that interesting loop back to Chapel Street, you get stuck on Chapel Street anyway. So, I am not sure that many people actually do use that for the connection you are talking about. The type of use that we are dealing with here really depends on who these residential units are catered to, short-term and long-term. If they are more student related initially, you actually would have way less traffic because students don't drive their cars. They drive their cars to Newark, but they typically don't drive their cars anywhere other than to go to the mall or visiting their parents on the weekend. So, they are not leaving this building to drive anywhere. They already live in the middle of town.

Mr. Silverman: So, you are finding that they really don't drive during the peak traffic periods.

Mr. Lang: Not at all. So, if this becomes more of a building that is catered to young professionals, you do have that typical pattern where you leave in the morning and come back at night, which is what DelDOT patterns. If you look at DelDOT's information, they don't have any concern over this project that is traffic related. None of us are experts in traffic and those guys supposedly are, so if they don't have a problem with it. I know we all have our individual quirky issues about driving downtown. I don't like driving downtown certain times of the day either. I don't like coming down Main Street at 5 o'clock because I know Main Street at 5 o'clock is not the time to come down Main Street, just like everybody else who is sitting in this room who drives on Main Street. So, the traffic issue is something that we can all complain about. I actually think introducing parking and cars downtown is a bad thing, but to meet Code you have to do it. We have many other residential dwelling units downtown that don't have parking and they rent due to market conditions very, very well. Recently, the discussion has been, let's try to comply with Code because Council wants every unit to have two spaces. This happened probably three or four years ago. Everyone started building these buildings that have parking. When you have parking, you have traffic. They go hand-in-hand. I just don't see the logic behind it. I could see maybe one space per unit. I don't know what we need to provide two spaces per unit, but we still do provide two spaces per unit by Code for this building. Some of it is in a garage. The beauty about a garage, too, is if you have a garage parked car, you are not going to take the car out in bad weather, you leave it inside. You have bike storage and a pedestrian environment. If I could build this building, I would build no parking and I would let the City municipal services provide parking garages and things like that, which are in dire need in some portions of our downtown area be it the businesses that back up to Lot #3. I know we have talked about a garage there. We have talked about a garage in Lot #1. I think that is what you should be doing with development in a downtown urban setting. The compromise here would be, maybe, one space per unit in a perfect world. Not two. But, that is Code. So, we do meet Code and the office component has 10 spaces. If we took the whole 3,000 sq. ft., we have eight employees. We don't have 10 spaces. We don't even use 10. We could use 10 when we have visitors and guests, but there are other places to park in town. You can park at the metered parking down by Walgreen's. You can park in the Walgreen's lot. You can park in Lot #3. It really depends on the time of day you come. I've never

been at a loss for finding a space anywhere downtown when I am trying to go out. I park behind Lot #3, Lot #4, I park behind another building that we may own. There is always parking downtown. Is it difficult? Is it more difficult than everybody wants? I think, unfortunately, it is one of those things about quality of life that everyone wants to park in front of the thing you go into and, if you have to park a little bit further away, but if you go other places, people walk rather than use their cars.

Size of the building, I think you pointed out that the size of the building is a concern. I think it is really a scale issue. We started through the process with different sizes of buildings. The building actually is 20 feet off the street because of it being four stories. Really, if it were a flat roof building, this building would be 48 ft. or 50 ft. tall. It is 60 ft. tall because of the peaks. If this was the Washington House, this building would be 48 ft. tall. It wouldn't be 70 ft. tall. So, it is not the size of the Washington House. The Washington House has a flat roof in large majority. This has a big huge 10 or 12 ft. pitch because of the design of the building to make it look more like a house. That is the idea of the look. So, is 60 ft. the number that no one wants? Is it 50 ft.? We could make it a flat roof building. And as you talked about mechanical issues, those upper areas are all dormer windows. We do need to provide some mechanical areas for our units. So, we will probably will actually have a false flat area that is only going to be 48 ft. off the street. If this whole building was flat, it would only be 48 ft. It wouldn't be as tall. This building is actually sized 14 ft., 12 ft., 12 ft., 12 ft. So, we have 36 ft. for the three residential floors and 12 to 14 ft. for the first floor. Tim will show you, if you look at a site plan, the grade of the site change is two feet across the front. As Maureen pointed out, it is gently sloping, but it slopes 2 feet. 2 feet over 400 feet is not a tremendous slope, but it impacts the height of the building over the whole mass size. Now for the three story building would it look correct? I was thinking about this today when I was looking at some of the recent townhouses that are being built. The townhouse buildings that are tall, and they are very tall, they are probably 40 some feet to the peak, if you add another 12 feet on top of them, it's really our parking. That gets back to the Code requirement. If we didn't need the parking, we could go for a waiver and we could make the building smaller, but we are trying to comply with Code. So, we get a lot of conflicting issues when we try to do a development plan because we come in and meet with, not only, Maureen and her staff but we meet with some of the other people that are involved in the approval process and we talk to them about what they are sensitive to. They are sensitive to parking. They are sensitive to parking waivers. We were actually giving spaces to the City when we originally proposed this building. We were going to give all the parking over on the side closest to Lot #3 to the City and we were asking for a large parking waiver. Then the discussion came up that maybe a large parking waiver wasn't the correct political decision. So, then we decided to retreat, make the building smaller, if you can believe that. The building used to be 36 units and now it is only 30 units. So, we have made a tremendous amount of compromise already through the process. Obviously, we haven't heard from many of the Planning Commissioners, but it hasn't met with many of the comments we have heard. But, obviously, it is a dynamic development process. We are juggling a number of different variables and we are trying to come up with a building that we think is an asset to the community. Every time we do a project because we live in a community, we walk down the street just like you do, we think about, okay, we love those two trees. We actually were talking to the University about pushing our building all the way down and keeping the trees and putting our access point right there. We had a great design and the University said they weren't excited about that right now. We've got too many things on our plate. We don't want to worry about that. Technically, if you look at our site plan, their entrance to their turf field is on the end of our back entrance. We actually wanted to push our back entrance into their entrance, give them access to the turf field and create the main access to the turf field where the two trees are, right through the two trees and keep them. I thought it was a great idea. They thought it was a good idea, too, but you are dealing with a large institution and they have many other things that are more important to deal with at the particular time they are working through. So, we have talked about modifying the design and working with them. Unfortunately, it is a process that you get started in and you try to get some logical conclusion to. We, obviously, try to incorporate your concerns and other people's concerns.

As it relates to the overall impact of additional housing, supply and demand, the market forces take care of that type of stuff. The University has introduced 700 or 800 more freshman to their freshman class this year. So, 800 students, even at 3 or 4 to an apartment is another 200 to 250 apartments. There needs to be housing for expansion of that community. The graduate programs at the University are continuing to expand as we know, because we are housing their new graduate masters' business program, where they are moving out of Lerner and they are moving into 13,000 square feet. They have actually talked to us about trying to lease those apartments at One South Main to all their graduate students because they are trying to increase their graduate enrollment from maybe 4,000 or 5,000 to 7,000 or 8,000. The community is going to continue to grow. The question is how is it going to grow and how are we as a community going to address it? We think that this building is a logical transition and a nice complement to an area that really doesn't have any great dynamic architectural appeal or great design appeal over there. It is not like we are tearing down beautiful old stately houses. We are dealing with a bunch of houses that are not in great repair and they weren't in great repair when we bought them.

So, what is the economic plan? We can all come up with a bunch of different plans. If you want to take some time one day, I can show the five or six different gyrations we went through already on the site. We thought that this was a nice building. Everyone has their own particular opinion on it. We are obviously here to discuss all those.

Mr. Chris Locke: Lang Development. In regards to the Comp Plan, as Maureen points out on page 7 of her report, this is a living and breathing document that can be modified at any time based on a project by project basis. It is not something that cannot be flexible during the period of time from one Comp Plan to the other.

In regards to the private letter agreement you had asked about the trash, people that would be using this trash compactor would be tenants that live in two of our other buildings – 108 E. Main Street and 102 E. Main Street. So, we can definitely accommodate you with that private letter agreement.

One thing on the large Oak tree, that Oak tree is large but with large trees comes the danger of that tree splitting, being hit by lightning. We did have that tree hit by lightning this summer and a substantial branch did fall down and caused damage to one of the houses. So, that tree has already been looked at by our tree specialist and he recommends that the tree should be taken down because of how old it is and the danger it provides to the houses.

Mr. Silverman: With the additional comments of the applicant and you have heard from the public, do any other Commission members have any other comments?

Mr. Frank McIntosh: There was a recommendation made in the report from the Department of reducing the building from 30 units to 22 units and no one has really responded to that. It seems to me that is the recommendation. Although, the Department has said you ought to go ahead with this, they put some qualifiers in there and that is a qualifier of some substance, it seems to me. So, I would be interested in hearing what you would say about that.

Mr. Lang: The concern or the issue we try to figure out or struggle with that number when we spoke with Maureen after she sent us her letter of review was, the building is really designed at 10 units per floor, So, if you have a four story building, you have 30 units on the second, third and fourth floors. If you want to reduce it to 22 does that mean you make the units bigger or you reduce the size of the building meaning you get rid of a floor. If you get rid of a floor you technically only have 20 units left. So, it was of those kinds of things where we were trying to understand where 22 came into play, and it was more, I think, from Maureen's perspective, of trying to meet a number of density which was similar to what NCV was, which makes sense because that is the existing present Code. From a design perspective, could you make 22 work on three floors of residential? Yes, you could but you would end up with units that are probably 1,600 sq. ft. which would not be easy to manage and would have more occupants no matter what you limited

it to. No matter what we limited it to because you are going to have too many square feet for people. They are going to have their friends over. They are going to have their boyfriends living with them. Who knows who is going to be living with them? So, what we figured out with units in a downtown district that we are trying to manage in a better manner is to have them a little bit smaller. So, we figure around 1,000 feet is a good size unit for somewhere between two and four people living depending on how they want to manage their finances. Long-term it provides more flexibility because those are the units that young professionals and young families are going to look for before they move out into the suburban areas of Oaklands and Nottingham Green a mile away. In theory that is the logic behind how we design buildings. Could we make 22 work? We could make 22 work, but we would have to discuss how 22 worked. Would it be with a three story building instead of a four story building? Then we might not build 22. We might only build 20. We allowed to build less than we are approved for. The concern we really have then is do we have 8 extra garages, which I touched on real quickly, but what do I do with those garages? Do I rent them to somebody or do I turn them into commercial space, and is that counter intuitive to what we want in the first floor of the building from the community's perspective of commercial creep down the street. We are trying to struggle with exactly how we handle that.

Mr. McIntosh: I don't pretend to be an expert in this area at all, but it seems that if it were 22 units or 20 units then that would be maybe one floor less and that might make it more compatible with the surrounding community. I don't know what the does to your P & L in building this, and so on. I have no clue about that, but that may address some of the issues that you have heard put before you tonight.

Mr. Lang: I agree with you 100%. I think one of the things that Maureen pointed out in her letter was the comparable project within reasonable distance of this. One thing we didn't talk about with regards to this project is those projects have a larger commercial component. We could do a three story building with 20 units and 7,000 feet of commercial space because we would take that additional parking that would normally be used for the residential and convert it to commercial space which is what was done at 108 E. Main where IHOP was, as an example. The whole second floor of IHOP is 15,000 feet of commercial space. If that was 15 apartments, you would have 25 or 30 units there which your density would be more in line with some of the other more dense projects in town. So, it really got back to what type of mix you want in your buildings. It seems like we, as a community, are more concerned about residential density not how big the project is. So, if I came in and said I am going to build a project that is 50,000 feet of commercial and 10 apartments, everyone would go, it is only 10 units. Great, you guys can do that. But, commercial creates traffic more than residential. DelDOT will tell you that. Look at all your DelDOT studies, residential creates very, very little traffic than commercial. So, what is the trade-off, which we went through and Maureen knows we went through this on this project as well as every other project we do. What is the mix that works? Could we make 20 units in a three story building? It is a trade-off but it is a workable possibility. Yes.

Mr. McIntosh: It seems to me that all the various sundry issues that have been raised like parking and the difference of what it looks like on one side of the street vs. the other, etc., could be addressed by that.

Mr. Lang: We understand that and that is something we could easily do. We were just trying not to introduce as much commercial. We could introduce more commercial to the left side of the building in the back where that parking is and we actually did this at 257 where we restricted the back of the building to non-restaurant related tenants, but this building splits pretty much 50/50. If you took the left side of the first floor and made it all commercial and the right side of the first floor was all your support parking, we might end up with that mix, which would make the building smaller from the height perspective. It would introduce a little more commercial, but it wouldn't allow commercial on the right side of the lower floor, which would keep the commercial towards the Main Street side of the building.

Ms. Feeney Roser: Could I ask a question then? We are talking about the garage spaces and that turning into commercial space. Isn't it possible for the office space to use the garage spaces and then you would have additional parking for guests?

Mr. Lang: That is the other way to do it. You could take that garage spaces behind the commercial space and then you would just have extra parking. The issue with extra parking downtown is that parking is a huge premium, as Maureen knows. So, someday somebody is going to rent that out for private parking because that is how much it is worth. So, even within the Washington House, and we have Washington House residents here, when they weren't fully occupied they rented spaces in there to our residents in our building. I know it because they told me where they rented their parking spaces from. If you have extra parking, you are going to rent it to somebody, which was one of the issues if we dropped units we end up with additional garages. Garages would be very sellable as a rental to someone, probably to one of my residents in another building that I have that does not have parking.

Mr. McIntosh: That is what would happen with the extra garages.

Mr. Lang: It makes sense. Thank you.

Mr. Hegedus: Jeff, you have talked about a potential way to reduce the number of units by taking a floor off.

Mr. Lang: Yes.

Mr. Hegedus: What I haven't heard is reducing the footprint.

Mr. Lang: We could make the building smaller in width and keep the same height and end up with less units also. Andy, as I mentioned, we started with that theory, with the courtyard in the middle but then we connected the building with the arch, but we actually had common space in the middle of the building. Because of the concern about the trees, if you wanted to, whether the trees were long-term viable, you could make a parking lot green space building and keep the building the same height, and reduce the density from 30 to 22 by chopping off 60 feet of the building or whatever the unit dimension would be, and we would push the building down or push the building up and put it in the middle, or however you want to do it. But, definitely, that is doable also.

Ms. Brill: Are you also opened to reducing from the three bedroom to, maybe, two bedroom units?

Mr. Lang: I know we get worried about how many bedrooms are in the units, but if you think about the long-term use of a building, if you had all these two bedroom units and you did convert it, you don't have the flexibility for a family with two small kids to buy them. So, why wouldn't you have some three bedrooms? It doesn't make any sense to not have three bedrooms. The bedrooms, instead of having a larger bedroom you have two smaller bedrooms so you have more privacy for whoever the occupants are. It is not like you are making the three bedroom 1,500 feet and the two-bedroom a 1,000 feet. They are all 1,000 feet. It is just how you configure your unit layout. So, if you go to a typical suburban apartment complex, there are one-bedroom units, there are one-bedroom with den, there are two bed-rooms, two bed-rooms with den, and three-bedroom units because they want to create an opportunity for the entire market to rent their building. If you create all the same size units, you are going to have all the same type of tenants all the time forever because that is who you are only going to get because of the type of unit you build. So, you need to have some flexibility in the type of unit layout for flexibility long-term. We don't build this building for this year. These buildings that we are building now are 50-year buildings. They are not going to be torn down in five years. They are going to be around long past when I am still around.

Ms. Feeney Roser: Just to add to that since it was my comment that you are going off, Mr. Lang has already said that they would agree to the four person limit per unit and it makes some sense about the mix of units. My idea of going to two-bedroom units more had to do with the size of the building and not being an architect I couldn't tell what that

would do. I suggested that it might reduce the size of the building, but I think that's already been discussed.

Ms. Brill: Also, I don't know the occupancy of the Washington House. I don't know how full it is, but also, the Newark Shopping Center is having owner occupied units. It seems like there is a demand in the market place for that.

Mr. Lang: I may not be exactly correct on my information, but the Newark Shopping Center is building a higher end luxury apartment complex with no owner occupants. The only owner occupant project that I know of downtown is the Washington House.

Ms. Feeney Roser: Right, but I think what Pat is referring to is the two unrelated individuals that they agreed to. That restriction somewhat takes it out of the undergraduate student market, but not entirely.

Mr. Lang: It does and doesn't, depending who you are marketing it to.

Mr. Silverman: Are there any other questions?

Mr. Cronin: I think it was brought up by one of the members of the public that it is kind of a precedent setting decision if we recommend this as it is. Everything south of the CSX line between the shopping center and Frazier Field which is Chapel Street, New Street, Choate Street and the remainder of Center Street and Linden Street, and I think it is going to really snowball as the years go by into more projects of this size, density, scale and character and it's kind of off and on in the report as to whether or not we think it is appropriate for downtown Newark in terms of design, scale and intensity and it's a diversion from what we have and have had in the Comp Plan and desirability for owner occupancy housing. In my judgment, I am not ready to see the wisdom of supporting this at the moment. It is more of a comment than it is a question.

Mr. Hegedus: I appreciate all the thought that has gone into the five, six, seven revisions you have done to try to figure out how to make this work. I'm with Bob in that this little part of Newark, although it is student occupied housing now, almost all, it was owner occupant and it is residential and there isn't another place around that still has that character or the potential for that character to remain. I have heard both. There are some issues with NCV that may be able to be corrected that might give you some flexibility or give developers some flexibility to do different types of projects that might be economically viable for you, which would still do more to maintain the character of that community. We have talked on some other projects that you have done where part of the market driven theory is if you build and occupy them that will force homeowners to upgrade their property. So, this is like a perfect little test case for that where there are some houses that are not doing well right now that with all the other apartments on the books, both the expansions you are doing and places that are close to this as well as the shopping center and other places that the dynamics that may cause some of the houses that are in this neighborhood to be upgraded and still maintain this residential character and provide places, for seniors that they could move into and downsize to a smaller place, and walk to Main Street more easily. Where I am is, with the Rental Study not finished yet and their recommendations for zoning changes not finished yet, the Comp Plan wanting to maintain that residential housing area and I think that is a good thing to do and then with the dynamics of the market potentially causing some of those houses to be upgraded and refurbished. It is not specifically this project, the building and your design. My issue is more just the change of the zoning, and doing that now would set the stage, potentially, for a whole change in character there that I am not ready to move on from yet, if that makes sense.

Mr. Lang: It is actually interesting as Bob and Andy you have pointed out, when you think about that whole area over there, and we all know our community pretty well, we drive or walk our streets, the best location and the best five or six or seven houses – the gentleman here owns two of them across from ours – but there are probably six or seven houses in there that you could actually visualize living in as an individual. If this project was being proposed on Chapel Street, you guys would be begging me to do it probably. Chapel Street is not a very nice looking street. We are really talking about a couple of

houses in an area that we would love for someone to buy, tear down and build a bunch of single family houses that we could live in. Unfortunately, the economic dynamics of that don't work and we live it every day. We are trying to think about how to do it. Say, we go in there and renovate these houses and said, okay, we are going to sell them for \$750,000. Who is going to buy them? Unfortunately, there are houses in Newark that you would think would sell, and it is a frustrating community because you drive an hour in either direction from us and houses that sell here for \$300,000 sell for a million. It is just crazy. So, we are trying to deal with that economic reality. Ideally, we all want what you guys talk about. I want that, too. That is why I am reinvesting at West Park Place instead of moving someplace in Hockessin or Yorklyn or something. I want the same thing that we all want. The question is where can we actually do it? And, I think there are areas that we want to do it in that isn't going to work and there are areas that we should be focusing on that I'm sure never happens like Kells and even East Park Place, Sunset, and Winslow. There are portions of the old part of Newark that we really need to focus on as a community that we should be thinking about how to do overlay districts over there to never allow that stuff to happen over there. Unfortunately, this little district we are talking about has been transition for 40 years. There really has never been a substantive single family livability over there. It has been all students, a bunch of apartments, and a bunch of old townhouses that have always been rented to somebody. It is all part of that college fabric. So, I think we all want that. I want that. If I could make this work differently, we would make it work differently, but there is no market for that. So, we cannot do this project and we can sit with those five houses and look at them for another ten years and then we are all going to go, why didn't we do that project five years ago. But, that is your prerogative. Obviously, we don't have the rights to build that and we are asking for some form of relief from the present zoning code. Is it the exact code we want? You said maybe we modify NCV. How do you modify NCV to make it work given the financing restrictions of condominiums in our present environment? Single family doesn't work. We actually looked at five story brownstones here – 11 of them – and turning them into three rental units. You live in part of it and you rent the other two. I was in Chicago. We laid the whole thing out. It is a beautiful design. It just doesn't really work because how do you rent the other two? Who do you rent them to? Then they turn them into all rental. Who controls it? How do you manage it? The nice thing about this building is it is all managed by one company. Condominium project or even individual sale projects, even the Washington House, you have to deal with when you sell some of the units or you don't sell some of the units and you have individual owner and they are renting to other people. Who is going to manage that thing? We manage the whole building until you do convert it and you have to convert it all at the same time and it has to be sold all at the same time. And, that is one of the problems you deal with. So, we understand that and we are trying to provide an alternative to what is there and still allow something that could be transitioned and could be reused 20 or 30 years from now for other things. So, it is a difficult decision and I understand you are understanding the criteria that we try to go through. Because we think about (inaudible) and we deal with them through the entire process. You try to satisfy this hand and you can't satisfy this hand so you are juggling back and forth all the time. But, we appreciate your comments.

Mr. Johnson: Jeff, I have a question. You bought these houses two years ago?

Mr. Lang: Yes Sir.

Mr. Johnson: In the last year we have been work on the Comp Plan, you had to have had something in mind when you bought the property. Why didn't you come forward when we were having our public meetings about the Comp Plan and rezoning and so forth and it was never mentioned? Now all of a sudden we have to change the Comp Plan.

Mr. Lang: I don't think the Comp Plan is supposed to be zoning specific, like spot individual parcel specific.

Mr. Johnson: I agree with you, but I would like to get it to use it and then change it and not change it before it is fully implemented.

Mr. Lang: It is one of those things that as a developer, if we sat and struggled with comprehensive plans of a city, it is really a city's role of what they want to do with their

city. If I went to those meetings, I would continue to say we need to think about how is the growth of our downtown going to happen? How do we want it to grow? Do we want it to grow from Delaware Avenue towards residential on that side or do we want it to grow here? This seems to be logical because you have barriers to stop it from growing past a certain point. You have the cemetery, the CSX tracks, you have Frazier Field and you have Chapel Street. So, you already have development at Newark Shopping Center, Pomeroy Station. There is some commercial development on Chapel Street, then it wraps all the way up to where this is. What is going to happen with that little area there? That little area should be the logical infill of our commercial district. That should be small restaurants, coffee shops, that kind of thing instead of creeping in the other direction, which it could. Who knows what is going to happen in 10 or 15 years from now, but there is a tremendous amount of infill area that could happen there. Instead of having restaurants proliferate first on Delaware Avenue and then go down Haines Street, Academy Street is all University. You look at S. College, the University owns the majority of South College. Who knows what they are going to do with that. So, you have the connection between S. College and STAR Campus. The University owns a lot of that, so we, as a community, don't have a lot of control over a lot of these districts. And, the Comp Plan is a great tool, Edgar, this NCV thing should be discussed at a broader City Council and Commissioners on what you want to do with NCV, if we were trying to make this fit into a zoning box, but we proposed it to Maureen and said okay, we can make it fit in the BB box. We did hear we have to go to revise the NCV, so we didn't go that direction for practical reasons.

Mr. McIntosh: I don't know where this is going to wind up this evening, but a lot of recommendations and concerns, etc., have been raised and I am wondering would you have any taste for going back and sitting around your table at Lang Development and saying, given all of that information, what could we come back with. Or, do you want to stay with where you are at?

Mr. Lang: The problem is, we have already been through a bunch of that.

Mr. McIntosh: I am not aware of that.

Mr. Lang: Frank, one of the problems you have is that years ago we talked about brings two plans to a meeting and we were told we could not bring two plans, you have to bring one. So, we go through the whole process now. We submit a plan in May and now it's October and we actually got comments three or four times from staff and we modified our plan, modified our plan, and modified our plan. We did hear from staff that this plan is ridiculous, don't even try it. We got a recommendation from the department director that she is in favor of the project at a reduced density. We didn't get, hey, don't try it, it doesn't make any sense. We could do that on every project but we would spend thousands of dollars and months and months reworking it all.

Mr. McIntosh: I recognize all of that. I really do, but by the same token I recognize that many of the comments that have been made are legitimate – the gentleman back here about losing parking and so on, and others saying you are going to have people use parking spaces that they aren't supposed to be using it. It sounds like you have the storm water kind of under control. I am just thinking that maybe some kind of compromise here might be something worth looking at.

Mr. Lang: I understand. One of the issues in the process is that we have meetings and very few people come and speak and usually it is the people that have a concern. We could probably parade 100 people that love the design of this building and would love to see this happen. Would we want to sit through that? Probably not. In any approval process it is the people that are concerned come out and usually it is two or three or four people that have the legitimate concerns. Some of them are legitimate and some of them aren't but they still have a concern and they want to voice it and that is how the public process works, fortunately or unfortunately.

Mr. Locke: I would just like to add, the Commission is advisory, not only to Council but we also take your comments and will take these comments to heart and then before we go to Council review those comments and go from there.

Mr. Silverman: At this point in time are there any more comments from the Commissioners?

Ms. Brill: I would just like to say that I agree with Bob, Andy and I think Edgar, although I think that the project is very handsome, I am not comfortable with the size of it and I would be in favor of tabling it or coming back. I couldn't vote for it now.

Mr. Lang: I think the issue without any clear direction, a table is not a good plan because what are we supposed to do, because we have hear a myriad of different topics to discuss. So, if you were thinking about some defined recommendation similar to what Maureen proposed. She proposed reduced density and if it was in line with what Frank was proposing maybe you modify the size of the building or you discuss that rather than tabling it and not giving us any understanding of what you are looking for because we take that under consideration and we move forward with either a revised plan based on your recommendations or not, is really the typical process that we go through. Right?

Ms. Feeney Roser: Yes, I would agree. If you are going to postpone consideration of it, you really need to give the applicant some direction as to what you would like to see them come back with, if that is your goal.

Mr. Hegedus: Just a point of procedure, if we do make a recommendation and approve the recommendation tonight to not change the zoning, then that forces the applicant to go back and reconsider and they are free to bring another plan forward if they need to that complies with the zoning.

Ms. Feeney Roser: The applicant has the option, even with a negative recommendation from this Commission, to take it to Council if they so choose.

Mr. Silverman: Hearing no further discussion, the Chair is interested in someone entertaining a motion.

Mr. Cronin: I have one thought. Perhaps it would be appropriate to recommend (inaudible) until the Rental Needs Assessment is concluded providing, perhaps, some more clarity to the Commission and the Council. With that thought in mind, do we have any idea of when a concluded report might be?

Ms. Feeney Roser: It will be before the end of the year. Mike is here. He may have a better feel for it. I know there is an open house scheduled for October 21st and then a couple of additional meetings after that. Mike, is it the end of year you expect this to be done or prior to?

Mr. Fortner: Yes, I expect a preliminary report presentation in November and probably by the end of the year.

Ms. Feeney Roser: To Council?

Mr. Fortner: Not necessarily to Council but some sort of public findings.

Ms. Feeney Roser: And, I'm sure it has to go to Council and be considered.

Mr. Cronin: Here we are in October so I think it might be wise to more or less hold off on approval on this and any subsequent projects like this with heavy rental properties until after we get the results of the Study. We can put that in the motion. You can still go to Council, you just wouldn't have that recommendation from the Planning Commission.

Mr. Locke: My response is this is something that was discussed a couple of Planning Commissions before and really, when City Council authorized the assessment did not give any direction to any department or any commission to stop approving or disapproving projects. Really, what you are proposing is almost a moratorium until some

report at some point in the future comes out and I don't think that was the intent of City Council when they approved the requisite funding for that assessment.

Mr. Johnson: I am in favor of just an up or down vote on the recommendation.

Mr. Silverman: Would someone care to make a recommendation.

Mr. Hegedus: I will make a motion to not approve the rezoning and subdivision plan that is before us, and my logic for that is not because the Rental Housing Needs Assessment is underway. It is because I am not comfortable giving up on the RS and the NCV zoning for this area at this time. I think that is the appropriate zoning to have here and I think that is what we currently intend for the future of Newark.

Mr. Silverman: Is there any additional discussion?

Mr. Johnson: Can you read the motion back? I get in a little trouble when we have negative motions.

Mr. Hegedus: My motion is to not approve the project that is before us.

Mr. Johnson: Wouldn't that be the same as recommending the project and then voting it down?

Mr. Cronin: That is the same as not recommending the project at all. It is giving no recommendation.

Mr. Johnson: So, the motion would be not to recommend changing the zoning or changing the existing Comprehensive Plan.

Ms. Feeney Roser: Or the subdivision and the special use permit. Is that your motion?

Mr. Hegedus: That is the motion.

Mr. Silverman: Is everyone clear on that?

MOTION BY HEGEDUS, SECONDED BY CRONIN THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- D. Not Recommend that City Council revise the existing Comprehensive Development Plan IV land use guides for this location from "single family residential (medium density)" to "commercial (pedestrian oriented)"; and,
- E. Not Recommend that City Council approve the rezoning of the .846 acres from the current RS (single family residential detached) zoning to BB (central business district) as shown on the attached Planning and Development Department Exhibit A dated October 7, 2014; and,
- F. Not Recommend that City Council approve the Lofts at Center Street major subdivision and special use permit plan as shown on the Karins and Associates Engineering plan dated May 5, 2014 with revisions through August 29, 2014, with the Subdivision Advisory Committee conditions.

Mr. Silverman: All those in favor of the motion, which is to not approve, signify by saying Aye. All those opposed to the motion signify saying nay.

VOTE: 5-1

AYE: BRILL, CRONIN, HEGEDUS, JOHNSON, SILVERMAN

NAY: MCINTOSH

MOTION PASSED

5. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE REGARDING “NO IMPACT” HOME BASED BUSINESSES.

Ms. Feeney Roser: The next item on the agenda is the review and consideration of an amendment to the Zoning Code regarding “No Impact” home based businesses. As you will remember, the Commission reviewed a proposed amendment to the Zoning Code at your last meeting and made several suggestions about how that ordinance could be improved. So, rather than have you do that at the table, we went back to the drawing board and revised a report which you have in front of you tonight which is substantially the same except that we consistently used the term “No Impact Home Business” as opposed to occupation. We addressed the concern about clearing up the wording to indicate that only residents within the home should be able to work within the home. We added some verbiage about the Comprehensive Development Plan V’s goals to ensure that zoning does not impede growth of home based businesses. We changed the word “shall” to the word “may” in the definition of a home based business when talking about internet businesses. In addition, the information now indicates that a business license should be available for inspection and, also, we added references to the North American Industry Classification System to the affidavit. I will say that some of these changes that are in the report didn’t actually get to the sample affidavit, so we will need to talk about them. For example, there are three times that the affidavit refers to occupation when it should refer to business. Further, Standard #4 needs to be worded on the affidavit like it is in the definition and we need, also, to add the business license being available for inspection. So, they were all comments that the Commission made at the last time that we got together. Rather than going through the entire report, I will say that our recommendation is to streamline the processes for the operation of home businesses which have no affect or impact upon the residential character of the unit in which they are conducted or the surrounding area.

The Planning and Development Department report reads as follows:

“Over the recent past, the Planning and Development Department has been asked to evaluate the existing regulations for home based businesses, classified in our Zoning Code as “*home occupations*” and “*Offices, professional, residential*” to determine if they can be simplified for home businesses or occupations that have no effect on the residential character of the home in which they are conducted or on the surrounding area. In addition to these requests, the City’s Comprehensive Development Plan V, currently under consideration, identifies a goal of ensuring that zoning requirements do not create impediments to desired business growth, and specifically, a Comp Plan V action item calls for evaluating the City’s existing regulations for “Home Based Businesses” and considering changes to make them less onerous.

Presently, Zoning Code Article IV: “Use and Area Regulations for Residence Districts” allows home occupations and residential professional offices only with a Council-granted Special Use Permit under Article XX, Section 32-78, regardless of the minimal impact of the home business. The intent of the review, therefore, is to seek and identify ways to simplify the process for some home businesses, while ensuring the residential character of the home and surrounding area is maintained.

Background

The City of Newark’s Zoning Code classifies home based businesses into two categories: 1) *Home occupations* and 2) *Offices, professional, residential*.

1. Home Occupations

Code Sec. 32-4 (a)(55) defines a *Home occupation* as: “A use customarily carried on within a dwelling by the inhabitants thereof, which use is incidental and subordinate to the residential use, subject to special requirements set forth in Article IV, Use and Area Regulations for Residence Districts, and Article XX, Section 32-78” (Special Use Permit).

Home occupations, in some form, are allowed with Special Use Permits in residential zoning districts RH, RT, RS (one-family detached residential), RD (one-family semi-detached residential), RM (multi-family dwellings – garden apartments), and RR (row or town houses) as follows:

“Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter:

- a. The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.
- b. All home occupations shall be subject to the following standards:
 1. The area used for the practice of home occupation shall occupy no more than 25% of the total floor area.
 2. No storage of materials or products outside the dwelling shall be permitted unless completely housed.
 3. The home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 4. No external alterations inconsistent with the residential use of the dwelling shall be permitted.
 5. No display of products shall be visible from outside the building.
 6. One display sign affixed to the building not exceeding a total area of two square feet nor projecting more than one foot beyond the building, and not illuminated, that will indicate from the exterior that the building is being utilized in part for purposes other than that of a dwelling shall be permitted.
 7. No employees shall be permitted in the operation of the home occupation other than two resident occupants of the dwelling.”

Regarding other residential zoning districts, RA (multi-family dwellings - high-rise apartments) and AC (adult communities) zonings do not permit home occupations at all, and the New Center Village Overlay district (NCV) permits them with special restrictions, but without the requirement for a Special Use Permit.

2. Professional Offices

Code Sec. 32-4 (a) (82.2) defines *Offices, professional, residential* as: “An office of a professional person in a residential dwelling which is clearly incidental to the residential character of the structure. The office shall be used for the practice of a profession rather than the operation of a trade or business. Artists, teachers, and related professionals may provide instruction limited to one student at a time. Professional occupations shall include doctors, dentists, lawyers, architects, accountants, engineers, musicians, artists, teachers, nurses, or other similar professionals.”

Similar to home occupations, professional residential offices, in some form, are also permitted with Special Use Permits in Zoning districts RH, RT, RS (one-family detached residential), RD (one-family semi-detached residential) and RM (multi-family dwellings – garden apartments) as follows:

“Professional office in a residential dwelling permitted subject to the following special provisions:

- a. Professional office is permitted only for the resident-owner of a single-family dwelling.
- b. Professional occupations shall be subject to the following standards:
 1. Three off-street parking spaces in addition to those otherwise required in this chapter.
 2. No more than one person shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical, or similar assistance
 3. The area used for the practice of a professional shall occupy no more than 25% of the total floor area, including garages.

4. No storage of materials or products outside the single-family dwelling unit shall be permitted unless completely housed.
5. The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.
6. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.
7. No display of products or advertising shall be visible from outside the building.”

Zoning districts RR (row or town houses), RA (multi-family dwellings - high-rise apartments) and AC (adult communities) do not permit residential professional offices; and NCV (New Center Village Overlay district) permits them with special restrictions, but without a Special Use Permit.

Research

According to the Small Business Administration (SBA) approximately 69% of new businesses being created start at home, and home based businesses make up about half of the small businesses in the United States. Furthermore, the emerging trend has led to nearly 13% of the U.S. adult population being engaged in entrepreneurship.

While traditionally zoning codes have banned home businesses, or require potential owners to go through public hearings for approval, many municipalities are easing restrictions on home based businesses to reflect a changing economy resulting in the increased use of information technology and the decreased importance of “brick and mortar” stores, which combine to have limited or no impact on the surrounding residential community.

Progressive zoning codes for home based businesses generally have the following objectives:

- Recognizing the need for some citizens to use their place of residence for limited nonresidential business activities.
- Ensuring that home based businesses are incidental and subordinate to the residential use of the dwelling.
- Protecting and maintaining the character of residential districts, and
- Ensuring that home based businesses do not create excess traffic, activity, noise, or other nuisances.

To make the application processes less onerous for home based businesses, many communities are eliminating the need for a public hearing (in our case, a Special Use Permit) by establishing strict “standards” within the Code for home based businesses to operate. Businesses that fall outside of these standards, still require a “Special Use Permit.” Common regulations include:

- **Regulations to restrict physical changes to the appearance of dwelling unit**
Typical restrictions prohibit exterior physical changes to the home for the purposes of conducting business, as well as prohibiting outside business activity, storage, or displays. Also, there often are further restrictions on signage and commercial vehicles.
- **Regulations to restrict traffic.**
Many ordinances restrict the number or visitors to home based businesses, as well as restricting the number of employees working in the home. Furthermore, some ordinances restrict business parking, or require that additional parking be provided.
- **Regulations to restrict nuisances and hazards.**
Ordinances typically prohibit nuisances such noise and odor, as well as prohibit the use or storage of hazardous materials.

- **Regulations to restrict business activities.**

Many zoning ordinances list businesses which are restricted or prohibited. Common prohibited home based businesses listed include: Animal kennels, food service and drinking places (except for food service contractors and caterers), and automotive repair services.

Source Materials

To prepare this report, the Planning & Development Department consulted the following:

“An Examination of the City of Newark’s Home Based Business Ordinance: Case Studies for Future Code Development” by Tyler Berl, Institute of Public Administration, University of Delaware, 2013.

American Planning Association. (2006) *Zoning Practice: Issue Number Nine- Practice Home Occupation.*

“More and More, There is No Place Like Home for Small Firms” Nicole Hong, Wall Street Journal, September 30, 2013.

Governmental Law Center; Albany Law School; *“Zoning For Home Occupations: Modernizing Zoning Codes to Accommodate Growth in Home-Based Businesses.”* (2006)

Small Business Administration; “Home-Based Business Zoning Laws” Accessed on October 3, 2013. <http://www.sba.gov/content/home-based-business-zoning-law>

City of Maryland Heights; [Zoning Code](#)

City of Dover; [Zoning Code](#)

Town of Cary, NC; [Zoning Code](#)

City of Wilmington; [Zoning Code](#)

Saint Paul, MN; [Zoning Code](#)

Scottsdale, AZ; [Zoning Code](#)

Chandler, AZ; [Zoning Code](#)

City of Chesapeake, VA; [Zoning Code](#)

Athens, GA; [Zoning Code](#)

Proposed No Impact Home Business Ordinance Amendments

Though a Special Use Permit is a helpful tool in terms of regulating and limiting the amount of impact a home business could potentially have on the community, research indicates that in cases where the home business has no impact on the residential character of the dwelling or the surrounding area, a Special Use Permit may be unnecessary. Furthermore, by eliminating the mandate of a Special Use Permit, no impact home businesses may be more inclined to open or operate under [Municipal Code](#).

To respond to the changing economy and encourage entrepreneurship, the Planning and Development Department proposes that home businesses which have no effect or impact on the residential character of a home or surrounding area should not have to go through the Special Use Permit process. Instead, the Department suggests the [Zoning Code](#) be amended to create a “no impact” home business definition, and that strict standards be developed to govern them, in order to safeguard the residential character of the home and the district in which it is located. The process for obtaining approval could then be handled administratively as part of the Business License system for all residential

districts. For example, a no impact home business applicant could sign a certificate or affidavit, which would state all the standards associated with a no impact home business, and the implications of violating the standards, as part of the approval of the business license. A sample affidavit is attached.

Recommendation

To streamline the processes for the operation of home businesses which have no effect or impact upon the residential character of the dwelling unit in which they are conducted or the surrounding area, the Planning and Development Department suggests that the Planning Commission recommend that the Zoning Code be amended in the following ways:

1. Amend Section 32-4 (a) to add a new definition at 32-4 (a)(78.1):

“No Impact Home Business: A use carried out within a dwelling by the inhabitants thereof, which use is inconsequential to the residential character of the structure and surrounding area. The business shall have no non-resident employees working within the home, nor involve any customer, client or visitor traffic, including but not limited to vehicles, pedestrians, commercial deliveries in excess of those normally associated with the residential use. No impact home businesses may include internet based businesses, business consulting, telephone sales/marketing, or any other profession that utilizes technology/communication services as the main means of business operations/communication.”

2. Amend (RH, RT and RS) Section 32-9 (a) by adding a new Section 32-9 (a) (18);

Amend (RD) Section 32-10 (a) by adding a new Section 32-10 (a) (18);

Amend (RM) Section 32-11 (a) by adding a new Section 32-11 (a) (24);

Amend (RA) Section 32-12 (a) by adding a new Section 32-12 (a) (10);

Amend (RR) Section 32-13 (a) by adding a new Section 32-13 (a) (21);

Amend (AC) Section 32-13.1 (a) by adding a new Section 32-13.1 (a) (13);

and

Amend (NCV) Section 32-13.3 (a) by adding a new Section 32-13.3 (a) (7) as follows:

“No Impact Home Businesses in a residential dwelling shall be permitted subject to the following special provisions:

- a. A no impact home business is permitted in a dwelling provided the person(s) so engaged is (are) a resident(s) of record of the dwelling.
- b. A no impact home business shall be subject to the following standards:
 1. The home business shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 2. There shall be no interruption, congestion or change to the character of the surrounding area in terms of appearance, noise, traffic, vehicular parking and employee/customer congregation resulting from the operation of the home business.
 3. No persons other than those residing on the premises shall be engaged or employed within the dwelling.
 4. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted; there shall be no evidence of the home business visible from the street or adjacent properties.
 5. No storage of materials or products outside of the residential dwelling unit shall be permitted unless completely housed.
 6. No sign or display of products or advertising shall be visible from outside the building.
 7. Machinery and/or equipment that causes noises, vibrations, glare, fumes, odor and dust detectable at the property line is prohibited.

Machinery and/or equipment that causes electrical interference with radio or television reception is also prohibited.

8. No traffic shall be generated in greater volume than would normally be expected in the residential area. The home business shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential package delivery service.
9. There shall be no increased demand on city services at the site as a result of the business.
10. A City of Newark business license, accompanied by a No Impact Home Business Application and Affidavit issued by the Planning and Development Department is required; and must be available for inspection.”

Ms. Feeney Roser: I think that we made all the changes the Commission requested. As I said, what I found in conversations with Andy, should have been made in the affidavit but were not; They are in the report itself, though, as far as I could tell. So, I am happy to answer any questions you may have.

Mr. Silverman: If there are no objections, we will accept the report from the Director as just read. To move on, Commissioners, do you have any questions or comments?

Mr. Hegedus: My compliments, Maureen, to you and your staff for taking all that mishmash from the last meeting and doing a great job of putting things together for us. I do have one question and then one wording change I would like to see.

One of the things you put in here was a tie to the business license so that people can get a business license at the same time, they could sign the affidavit and everything would be clean. The only question I have is that it talks about the affidavit still requiring a Planning and Development Department signature where the business license comes out of the Finance Office?

Ms. Feeney Roser: Right.

Mr. Hegedus: I didn't know if there is an easy way to make that on people so they don't have to go from one end of the building to the other end of the building looking for someone to sign things, or if it is a no impact then it could just be Finance has your authorization to sign it as long as people sign the affidavit.

Ms. Feeney Roser: Actually, I think more than likely they are going to start out with us in the Planning and Development Department so we would go through the requirements, where we give them an affidavit before they started the process. The process actually starts for a business license in Planning and Development in the Code Enforcement Division. So, I don't think it is as much back and forth as it may appear. They do have to pay downstairs because we don't take payments upstairs anymore, and so they finish the process downstairs and issue it, but it actually starts with us anyway. So, we could give the affidavit from the very beginning and then they could start their application process.

Mr. Hegedus: So, the wording changes I like. I really like the change in the definition that you added and the second sentence says, “The business shall have no non-resident employee working within the home.” So, I would like item #4 under “No impact home business shall be subject to the following standards” to reflect similar wording so if it says no persons other than those residing on the premises shall work within the dwelling. I think that more closely matches your changes in your definition. So, #4, again, would read, “No persons other than those residing on the premises shall work within the dwelling.”

Ms. Feeney Roser: That is the change that I made to the affidavit that didn't make it into the report. So, I appreciate you bringing it to our attention.

Mr. Hegedus: That would flow over to item #4 in the report and then you already said the occupation issues and the other things you caught. Right?

Ms. Feeney Roser: Right.

Mr. Silverman: Do any other Commissioners have any other comments?

Mr. Cronin: Mr. Chairman, I think the “no more than 25% of the total floor area” threshold, while it may not be present elsewhere in the Code, it is an unnecessarily small percentage to restrict somebody to in their own home and I think it is in the overall best economic interest to the community to allow that percentage to be higher than 25%. I would go as high as 50% personally, because as long as you can’t tell from the outside what is being used inside, what difference does it make, truly and then people have different size homes. You have 1,000 sq. ft. home some places and you have 5,000 sq. ft. homes some places.

Mr. Silverman: And, also thinking beyond a single family detached unit, if I wanted to run a business out of an apartment. My second bedroom that I am using for an office may be more than 25% of the total floor area or I’m using my living room and a bedroom.

Mr. Cronin: Particularly if you are a single person and you are starting a business and you just need a place to sleep and eat and take care of your personal health habits, and if you are not entertaining in and out your door for business purposes, the fact that you have more space dedicated to that, I think, is of little consequence to the community as a whole.

Ms. Feeney Roser: As I mentioned at the last meeting, that is a threshold we use in other places in the Code to address home based businesses, but I agree with Mr. Cronin that that is based on the impact to the neighborhood, so if the Commission wants to eliminate that, the Department doesn’t have a problem with it. You may want to hear from the public.

Mr. Johnson: I sort of like it as a guideline, but I agree with Bob.

Mr. Hegedus: The problem is it is listed as a standard in here. If it is a standard, you either meet it or you don’t rather than a guideline. It is either we raise the number to 50%, or delete it, but that might be too radical.

Mr. Johnson: That is what Bob was saying. I think Bob was for the deletion.

Mr. Cronin: And, the other aspect of this is the garage. You have houses with one or two car garages. I know a home in Newark that has a ten car garage in the City limits. You have attached and detached garages. Sometimes you have both. It is relevant to include the garages, I guess, but we need to think about what the parameters are and what we are stating. The words have meaning and as long as we are comfortable with whatever they say, we are A-Okay.

Mr. Silverman: I don’t know how to quantify it, but we want it to remain habitable and inhabited, but is 25% the right number?

Mr. Cronin: Suppose you delete item #1 on page 6 and start with item #2?

Mr. Silverman: The key standard is not being visible and not being sensed from outside the house. The activity is invisible.

Mr. Cronin: That is the intent and the goal, is it not?

Ms. Feeney Roser: I don’t believe the Department would have an issue.

Mr. Johnson: My recommendation was to delete the word “including garage.” I’m just being facetious. The night is late.

Mr. Hegedus: Before we go to the public and ask the public, I think, Bob, what I just heard you say was let's delete #1 and then start with #2 which gives the standard that it is inhabitable, it is primarily a residential home and I think I heard Maureen say that the Department doesn't have an objection to that.

Mr. Cronin: And it does say subordinate to the residential use, so that might suggest 50% - the words "subordinate to" - but it is not a specific number.

Mr. Hegedus: So, whoever makes a motion will include a motion to include the deletion of #1 and the change to #4.

Mr. Silverman: I think there is a word missing. #4, No external alternations consistent with the residential," shouldn't it be inconsistent?

Ms. Feeney Roser: Yes, that should be inconsistent on page #2. Page #6 is right, but page #2 should be changed.

Mr. Silverman: Also, on page #6, #8, it references "machinery." I would like to see that word changed to "activity." Machinery isn't necessarily a sewing machine or a stamping mill. It could be electromagnetic.

Mr. Johnson: I disagree. Can you tell me what activity makes noise? Shuffling papers? Is that the kind of noise we want to eliminate or is it machinery noise?

Mr. Silverman: So, if I am repairing amplifiers and I'm testing the ranges, you don't mind thumpa, thumpa, thumpa coming through your wall?

Mr. Johnson: Can't you say that is a piece of machinery? It's a machine.

Ms. Feeney Roser: Or is it equipment.

Mr. Johnson: Why don't you say machinery or equipment?

Mr. Silverman: Okay, fine. I just wanted to get to that. And, we had talked around motor vehicles being parked in driveways displaying logos and other signs. Did that ever find its way in here?

Mr. Johnson: It is already in the City Code.

Mr. Silverman: Okay, that is where it is taken care of. Thank you.

Ms. Feeney Roser: Did we just say machinery and equipment or just equipment?

Mr. McIntosh: I would think it would be machinery and/or equipment.

Ms. Feeney Roser: Okay, we can do that.

Mr. Silverman: Does the public have any comments?

Mr. Jim McKelvey: I originally signed up to talk about this because at the last meeting there was some discussion about low impact or no impact, and I am delighted to see that this is well written, no impact, very clear. If any of this should come before the Board of Adjustment they will love the fact that it is clear and that it is not a word that needs a definition from somebody's dictionary. I would support the idea about leaving out the percentage because the point is here, it is no impact. It doesn't matter how much space.

Mr. Silverman: Any other discussion before we move to the questions? The Chair entertains a motions.

MOTION BY HEGEDUS, SECONDED BY BRILL THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

THAT COUNCIL APPROVE THE ZONING AMENDMENT FOR NO IMPACT HOME BUSINESSES AS AMENDED:

1. Amend Section 32-4 (a) to add a new definition at 32-4 (a)(78.1):

“No Impact Home Business: A use carried out within a dwelling by the inhabitants thereof, which use is inconsequential to the residential character of the structure and surrounding area. The business shall have no non-resident employees working within the home, nor involve any customer, client or visitor traffic, including but not limited to vehicles, pedestrians, commercial deliveries in excess of those normally associated with the residential use. No impact home businesses may include internet based businesses, business consulting, telephone sales/marketing, or any other profession that utilizes technology/communication services as the main means of business operations/communication.”

2. Amend (RH, RT and RS) Section 32-9 (a) by adding a new Section 32-9 (a) (18);

Amend (RD) Section 32-10 (a) by adding a new Section 32-10 (a) (18);

Amend (RM) Section 32-11 (a) by adding a new Section 32-11 (a) (24);

Amend (RA) Section 32-12 (a) by adding a new Section 32-12 (a) (10);

Amend (RR) Section 32-13 (a) by adding a new Section 32-13 (a) (21);

Amend (AC) Section 32-13.1 (a) by adding a new Section 32-13.1 (a) (13); and

Amend (NCV) Section 32-13.3 (a) by adding a new Section 32-13.3 (a) (7) as follows:

“No Impact Home Businesses in a residential dwelling shall be permitted subject to the following special provisions:

- c. A no impact home business is permitted in a dwelling provided the person(s) so engaged is (are) a resident(s) of record of the dwelling.
- d. A no impact home business shall be subject to the following standards:
 1. The home business shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 2. There shall be no interruption, congestion or change to the character of the surrounding area in terms of appearance, noise, traffic, vehicular parking and employee/customer congregation resulting from the operation of the home business.
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 6. No sign or display of products or advertising shall be visible from outside the building.
 7. Machinery and/or equipment that causes noises, vibrations, glare, fumes, odor and dust detectable at the property line is prohibited. Machinery and/or equipment that causes electrical interference with radio or television reception is also prohibited.
 8. No traffic shall be generated in greater volume than would normally be expected in the residential area. The home business shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential package delivery service.
 9. There shall be no increased demand on city services at the site as a result of the business.

10. A City of Newark business license, accompanied by a No Impact Home Business Application and Affidavit issued by the Planning and Development Department is required; and must be available for inspection.”

VOTE: 6-0

AYE: BRILL, CRONIN, HEGEDUS, JOHNSON, MCINTOSH, SILVERMAN
NAY: NONE

MOTION PASSED UNANIMOUSLY

As there was no further business, the Planning Commission adjourned at 9:29 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission